

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2274

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

2023 All-Source Request for Proposals.

**PORTLAND GENERAL ELECTRIC
COMPANY’S REPLY COMMENTS**

I. INTRODUCTION

Pursuant to the scheduling order issued in this docket, Portland General Electric Company (PGE) submits these comments in response to the Independent Evaluator’s (IE) May 31, 2023 assessment of the draft RFP, and to comments submitted on June 16, 2023 by BrightNight Power, Northwest and Intermountain Power Producers’ Coalition (NIPPC), Portland General Electric’s Benchmark Team (PGE Benchmark), Renewable Northwest (RNW), Staff of the Public Utility Commission of Oregon (Staff), and Swan Lake North Pumped Storage, LLC and the Goldendale Energy Storage Project (Swan Lake and Goldendale). Additionally, Oregon Solar and Storage Industries Association (OSSIA) submitted comments after the filing deadline; PGE will respond to OSSIA’s recommendations as well.

PGE appreciates the IE’s assessment that PGE’s Draft RFP is “generally consistent with the Oregon Competitive Bidding [Rules]”¹ as well as the opinion of Staff that the Draft RFP “includes most of the appropriate elements required by the Commission and is generally consistent with the [Competitive Bidding Rules].”² PGE is grateful for the comments and

¹ Independent Evaluator’s Assessment of PGE’s Draft All Source RFP (IE Report), 2.

² Staff Comments on Draft RFP and Scoring and Modeling Methodology (Staff Comments), 3.

recommendations from the IE and stakeholders, and many of those recommendations will be incorporated into our final RFP as discussed in these comments.

II. REPLY

PGE’s Reply organizes the comments and recommendations from the IE and stakeholders into the following categories: clarification regarding the commercial online date (COD) of resources bidding into this RFP, timeline of RFP, transmission and interconnection requirements, recommendations on minimum requirements and RFP scoring, and discussions of benchmark and affiliate treatment. In these comments, PGE will address the major recommendations proposed by parties and the IE and will identify the associated RFP changes—when applicable—adopted by PGE. The comments will also address recommendations that were considered but that PGE ultimately declined to adopt at this time.

A. Commercial Online Date (COD) requirements of the 2023 RFP

Multiple parties provided feedback and recommendations on the COD requirements. In the IE assessment, Bates White recommended allowing projects that have a COD through the end of 2026.³ Similarly, Staff recommends additional flexibility on COD and requests clarification from PGE as to what CODs will be accepted following discussion during the bidder workshops on May 26, 2023, and June 5, 2023.⁴ NIPPC summarizes the discussion from the June 5 workshop and requests PGE confirm NIPPC’s summary.⁵ PGE Benchmark, RNW, OSSIA, and BrightNight each recommend additional COD flexibility and request clarification on COD treatment.⁶

³ IE Report, 23.

⁴ Staff Comments, 13-14.

⁵ NIPPC Comments, 40-41.

⁶ PGE Benchmark Comments, 2; BrightNight Comments, 2; RNW Comments, 2; OSSIA comments 1.

PGE confirms the clarifications discussed as part of the June 5, 2023 Bidder Workshop, and notes that the potential for two product types remains: a 2026 capacity need (which is a shortfall currently seen across both summer and winter seasons beginning in 2026) and an annual energy procurement need of approximately 181 MWa per year to make continual progress toward decarbonization targets. While the volumes and timing ultimately procured will be responsive to any changes in the planning process currently being discussed in docket LC 80, PGE has structured the COD requirements to clearly identify which projects could meet which system needs. The COD requirements in the 2023 RFP have been modified as follows:

- In the event that a 2026 capacity need continues to exist across both summer and winter seasons and is acknowledged in the 2023 IRP, projects with a 12/31/2025 COD will be prioritized to meet this capacity need.
- PGE will accept CODs from projects through the end of the IRP action plan window on 12/31/2027.

While projects that can meet a 12/31/2025 COD would be prioritized to meet a 2026 capacity need, PGE will consider all projects with a COD on or before 12/31/2027 as part of the annual energy need. PGE further clarifies that all projects will be scored identically, and the COD will not impact capacity contribution attributable to projects as part of bid scoring.

During the June 5 Bidder Workshop, an interested party asked what would happen if there were not sufficient projects to fill the capacity need. If no projects can meet the 12/31/2025 COD or if the volume is not sufficient to meet the capacity need, PGE will look to fill the capacity need as quickly as possible from projects with a later CODs that would otherwise be considered toward the annual energy need. The capacity/energy actions and the corresponding COD alignment in the 2023 RFP is shown in Figure 1 below.

Figure 1 – PGE action specified in 2023 CEP/IRP action plan and corresponding COD requested in 2023 RFP

Action in Planning Process	COD Alignment in 2023 RFP
2026 Capacity Action identified in CEP/IRP	12/31/2025 COD priority, may consider later CODs if 12/31/2025 volume is insufficient
2026 Energy Action identified in CEP/IRP (181 MWa per year)	12/31/2025 COD
	12/31/2026 COD
	12/31/2027 COD
	12/31/2029 COD (long lead time)

PGE confirms that while the CODs will help align project timing with system need, scoring projects across the full range of CODs will be identical. Each project will receive an energy, capacity, and flexibility score, and these scores will not differ based on COD.

Swan Lake and Goldendale recommend, and Staff supports, a modification to the COD for long lead time resources from 12/31/2028 to 12/31/2029 to reflect a timescale consistent with what was allowed in the 2021 RFP.⁷ PGE is amenable to this change and has incorporated the adjusted COD for long lead time resources.

⁷ Swan Lake and Goldendale Comments, 2; Staff Comments, 14-15.
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B. RFP timeline and major milestones

1. Post-issuance timeline

The IE's assessment noted the brisk timeline associated with the receipt and scoring of bids in this RFP and recommended additional time for certain scoring and evaluation activities prior to the construction and request for acknowledgment of a final shortlist.⁸ Staff agreed with the IE's proposed schedule modifications.⁹ The recommended timeline modifications from the IE are included below:

Action	PGE Timeline		Suggested Timeline	
	date	days	date	days
Benchmark Receipt	9/15/2023		9/15/2023	
RFP Bids due	10/6/2023	21	10/13/2023	28
Initial Shortlist	10/30/2023	24	11/10/2023	28
BAFO Update	11/17/2023	18	11/28/2023	18
PGE submits Acknowledgement Request	1/23/2024	67	2/2/2024	66

PGE is amenable to this change and has incorporated the timeline modifications into the draft RFP documentation.

2. Notice of Intent to Bid (NOI)

The IE and Staff recommended that the NOI be delayed until the beginning of September so that the NOI will follow the anticipated Commission decision on PGE's RFP structure in August.¹⁰ PGE has incorporated this change, and the NOI date in RFP documents is now September 4, 2023.

⁸ IE Report, 9-10.

⁹ IE Report, 22; Staff Comments, 12.

¹⁰ IE Report, 23; Staff Comments, 16.

C. Transmission and interconnection requirements

PGE received comments on the transmission and interconnection requirements in the Draft RFP. The IE and Staff expressed support for accommodating potential delays in the transmission queue process¹¹ and encouraged PGE to consider providing additional information on how resources could participate if they wished to use existing PGE transmission assets.¹² NIPPC recommends that PGE deem Conditional Firm Service (CFS), System Conditions (System Conditions) transmission products as conforming (albeit with a decremented capacity contribution), and PGE Benchmark recommends a variation of this concept and suggests that projects offered exclusively System Conditions service by BPA be deemed conforming (RNW expresses support for PGE Benchmark’s recommendation¹³). PGE Benchmark further recommends that projects participating in the 2023 BPA TSR Study and Expansion Process (TSEP) should be deemed conforming and should not be penalized for delays attributable to BPA as part of the ongoing 2023 TSEP.¹⁴

1. 2023 BPA TSEP treatment

PGE Benchmark requests that the minimum requirements be modified to allow projects participating in the 2023 TSEP to be deemed conforming on the basis that BPA is experiencing “a significant increase in transmission requests” and has therefore delayed the 2023 TSEP results from Spring 2023 to Fall 2023.¹⁵ PGE Benchmark further posits that due to the number of requests in the region, it would “not be unreasonable to expect a possible delay in future TSEP processes.”¹⁶

¹¹ IE Report, 9; Staff Comments, 8.

¹² IE Report, 12; Staff Comments, 6-7.

¹³ RNW Comments, 2.

¹⁴ PGE Benchmark Comments, 2.

¹⁵ *Id.*, 1.

¹⁶ *Id.*

In the design of the 2023 RFP, PGE's requirements are established to avoid the transmission uncertainty that PGE Benchmark describes. Throughout the 2023 IRP roundtable process, PGE identified that there was a limited volume of high-value projects with grantable transmission service requests that are deliverable to PGE on a timescale consistent with the 2023 IRP Action Plan. The issuance and request for expedited consideration of this RFP was to allow PGE to seek these remaining projects with near-term deliverability across BPA to PGE.¹⁷

The 2022 TSEP identified significant upgrades needed, and other than the Schultz-Wautoma Series Capacitor Upgrade, all of the remaining required upgrades for delivery to PGE load are estimated for completion in the 2030s.¹⁸ Therefore, it is not unreasonable for PGE to surmise that projects seeking delivery to PGE load in the 2023 TSEP will be subject to the same upgrade needs as those that participated in the 2022 TSEP, and it is highly unlikely a project participating in the 2023 TSEP would be granted transmission service on a timeline that corresponds to PGE's near-term capacity and energy needs.

As a result, PGE declines to adopt PGE Benchmark's recommendation that all projects participating in the 2023 TSEP be designated as conforming with the minimum requirements for this RFP as outlined in Appendix N. However, we understand the difficulty of navigating the TSEP process in its current form and recognize that a flexible approach may be beneficial to customers. In this RFP, we recommend:

- Projects who are participating the 2023 TSEP seeking delivery to PGE load but that believe they have a viable path to meeting CODs outlined in this RFP should provide a narrative and detail as to their specific situation. PGE may consider

¹⁷ PGE Draft RFP, Cover Letter, 1-2.

¹⁸ PGE IRP Roundtable presentation 22-8, September 2022, slides 40-45.

projects that can show that they are not likely to be subject to the upgrades listed below that were identified in the 2022 TSEP.

Table 1 – BPA upgrades identified for delivery to PGE

Project	Estimated Completion¹⁹
Ross-Rivergate 230 kV rebuild	2030
Cross Cascades North Reinforcement	2030
Big Eddy to Chemawa 500 kV rebuild	2030
Southern Oregon Coast Reinforcement project	2033
BPA Chehalis to Cowlitz Tap 230 kV rebuild	2033
Montana to Washington	TBD

- We also invite projects in the 2023 TSEP that are likely to be subject to the upgrades listed above (and therefore do not have a likely path to meet 2023 RFP CODs) to participate in PGE's forthcoming 2023 RFI, which will focus on how PGE and interested parties could collaborate to alleviate transmission constraints for future RFP tranches. PGE plans to share additional information on the RFI, and how the transmission focus could inform future RFPs, later this year.

2. Conforming transmission products

NIPPC, RNW, and PGE Benchmark requested modifications to the transmission products identified as conforming in the 2023 RFP.²⁰ NIPPC asks that PGE accept CFS System Conditions bids due to the potential for viable bids to be excluded, while PGE Benchmark and

¹⁹ Estimated completion date per BPA 2022 TSEP.

²⁰ NIPPC Comments, 4-7; RNW Comments, 2; PGE Benchmark Comments, 2-3.

RNW recommend that PGE allow System Conditions bids for projects that did not have an option to obtain a number of hours product.

NIPPC identified the divergent risk profiles of CFS: System Conditions and Number of Hours, summarized as follows:

- Number of Hours: BPA specifies in the transmission service agreement that it can curtail the customer's service for any reason up to the number of hours specified in the service agreement. The current range is 33 to 247 hours of curtailment per year.
- System Conditions: BPA specifies in the transmission service agreement the conditions under which the customer could be curtailed, based upon BPA flowgates and when flows across specific paths approach their operating limits.

In the 2023 CEP/IRP, PGE modeled CFS Number of Hours service consistent with Commission Order 21-320, which adopted Staff's recommendation to assume that 50 percent of the curtailable hours would coincide with PGE's system peak.²¹ PGE also modeled sensitivities to assess capacity contribution of curtailment that approached the current upper limit of curtailment under the number of hours product type.²²

While NIPPC notes that the capacity contribution of System Conditions is likely less than number of hours (but not zero), PGE does not have guidance from BPA as to what the risk calculation should be in acquiring an RFP resource that will rely on System Conditions products for a 15–30-year period beginning in the mid-2020s. Of additional concern—and as noted by NIPPC—the Portland Area Subgrid is congested to the point of BPA adding a new flowgate

²¹ Order 21-320, 23.

²² 2023 CEP/IRP, Appendix J, page 545.

specific to the Portland Metropolitan Area. PGE’s understanding is that BPA could, and likely will, use this new flowgate as a system condition that could curtail projects that deliver to PGE, and the amount of curtailment events per year could grow as congestion in the Portland area and on BPA’s system grows.

While we agree with NIPPC that the capacity value associated with CFS System Conditions transmission is likely not zero, it is less than long-term firm and almost certainly less than number of hours products over the life of the asset. While remaining Long-Term Firm and CFS Number of Hours projects remain with TSRs that point to PGE, the projects with the higher-value transmission product should be prioritized. Deeming all CFS System Conditions bids to be conforming in this RFP—and then attempting to guess at capacity contribution absent guidance from BPA—would run the risk of projects with an unknown risk profile being modeled against those with a known and valuable cost/risk calculus. PGE’s stated intent in this RFP is to prioritize the 700 MW of long-term firm TSRs and 1,300 MW of CFS Number of Hours products remaining with TSRs pointing to PGE in either “study” or “granted” status, while initiating an RFI later this year to begin assessing additional transmission products for the future.

PGE also recognizes that the capacity and energy need between now and the end of the Action Plan window is potentially as high as 1,500-2,000 MW nameplate,²³ and that there will likely be challenges acquiring the full volume on the company’s preferred transmission structure. PGE proposes retaining the minimum requirement to have Long-Term Firm or CFS Number of Hours as a conforming product type, but if there is insufficient volume to construct a final shortlist, PGE may elect to consider projects who are impacted by flowgates upon which they were not given the option of CFS Number of Hours. PGE’s understanding is that these paths—

²³ Assuming 181 MWa of energy need over three years per the IRP action plan and a potential 2026 capacity need (reference capacity was ~200 MW in 2026 per the IRP action plan)

particularly Portland Area Subgrid—directly impact deliverability to PGE and will not be avoidable by projects moving out into the future. Projects that elected to seek system conditions when number of hours was an option will not be considered.

3. Interconnection flexibility

The IE recommended that PGE consider modifying the final shortlist requirement for bidders to have a completed facilities study due to the long processing times in the interconnection queue process.²⁴ PGE is amenable to this change and has modified the requirement to instead specify that bidders must have a facilities study agreement with the transmission service provider at the time of final shortlist selection.

D. Recommendations on RFP scoring and minimum requirements

1. Opportunity to Cure

Multiple parties requested further clarification on how and whether bidders could plan to “cure” any initial deficiency that would be noted in the minimum requirements screen.²⁵ PGE confirms that for any bidders who may have a misalignment with a minimum requirement, PGE will offer an opportunity to cure the deficiency before a bidder is considered for disqualification. PGE has added clarifying language to Appendix N.

2. Form Contracts

As detailed in PGE’s May 26 Bidder Workshop slides, the 2023 Draft RFP modifies the way in which bid scoring occurs to remove non-price criteria, instead relying on a combination of minimum requirements and a price score. In past RFPs, a component of the non-price score was an assessment of commercial performance risk, which entailed PGE posting form contracts

²⁴ IE Report, 20.

²⁵ IE Report, 18; RNW Comments, 2.

in accordance with the competitive bidding rules,²⁶ requiring that bidders provide redlined versions of the form contracts with their requested changes and scoring bidder conformance to the terms outlined by PGE.

In the 2023 Draft RFP, PGE has instead taken an approach that is intended to reflect the changing market conditions by publicly posting form contracts in accordance with rule, and inviting bidders to provide redline versions as part of their bid package if they wish. Adherence to form contracts will not be scored and PGE will see the current market for terms as recommended by the IE.²⁷

While multiple parties expressed their support for PGE removing non-price scoring generally—and commercial performance risk as a non-price scoring criterium specifically—multiple parties recommended that PGE find a way to compel bidders to provide form contract redlines to understand the basis for the price provided in the bid. NIPPC also recommended that PGE be required to update the form contracts posted to “be more aligned with market terms” during the regulatory review of the Draft RFP.²⁸

PGE appreciates the feedback and agrees that the specific terms and conditions will be a key part of the negotiation process. However, projects that meet the minimum requirements specified in Appendix N have demonstrated sufficient viability to receive a price score and advance to commercial negotiation if they are selected to the final shortlist. As part of negotiations, PGE and bidders will engage in good faith to identify the terms and conditions needed to ensure that the project reflects the appropriate balance of cost and risk. PGE’s posted form contracts represent our preferred terms, but consistent with the guidance recommended by

²⁶ *In re Portland General Electric Company, 2021 All-Source Request for Proposals*, Docket UM 2166, PGE scoring and modeling methodology presentation filed November 11, 2021, Slide 15.

²⁷ IE Report, 13-14.

²⁸ NIPPC Comments, 2.

the IE, we anticipate that terms may shift during the negotiation based on specific counterparties and risk profiles.

Reviewing redline term sheets in advance of commercial negotiation may provide information that better helps PGE understand the bid and pricing offered, and PGE welcomes those redlined form contracts if the bidder wishes to provide them. However, PGE will not adopt the feedback that parties should be compelled to provide redlines as part of the bid process, and if redlines are received, PGE will not use these redlined versions to assess whether a project is conforming, to determine whether a project is eligible for inclusion on the initial or final shortlist, or to adjust the rank order of either list. Once projects are identified for the final shortlist, PGE anticipates engaging with all selected parties individually to determine which projects on the final shortlist are transactable as part of good faith negotiations. This approach allows PGE to be responsive to current market conditions and to be receptive to bidder feedback without it being part of the scoring process.

PGE further declines PGE Benchmark's recommendation to ask bidders to adhere to PGE's posted form contracts or to note that their price assumes a divergence from PGE's form contracts. These posted form contracts are information-only and outline PGE's preferred terms, adherence to form contracts is not a minimum requirement to participate. PGE declines to adopt NIPPC's recommendation that PGE update all form contracts to "bring them in line with market"²⁹ for the same reason. PGE's posted form contracts are representative of the company's preferred terms, not a guess at what the current market terms and conditions are.

²⁹ *Id.*

3. Clarification regarding Appendix K – Credit Guidance

NIPPC, the IE, and Staff recommended additional guidance regarding which aspects of Appendix K – Credit Guidance are requirements, and which are guidance.³⁰³¹³² Requirements associated with financing at the time of bid are included in Appendix N as follows:

As applicable, Bidders must provide a reasonable plan to obtain project financing. Bidders who are unable to internally or balance sheet finance the proposed resource (supported by appropriate financial statements) must provide evidence of a good faith commitment from a financial institution or lender prior to placement on PGE’s final shortlist.³³

Requirements prior to final shortlist acknowledgment are as follows:

For investment grade Bidders, their long-term, senior unsecured debt must be rated BBB- or higher by Standard & Poor’s and Fitch, BBB (low) or higher by DBRS, or Baa3 or higher by Moody’s Investor Services, Inc.

For non-investment grade Bidders, they must demonstrate that a qualified institution will secure the Bidder’s performance obligations through a letter of credit or guaranty, in a form acceptable to PGE.

PGE’s guidance in Appendix K is meant to provide further clarification to bidders on what would constitute credit eligibility thresholds and guidance regarding what acceptable “good faith commitment” from a financial institutions or lenders would be. PGE has provided a redlined version of Appendix K along with this filing that updates the labeling to clarify that the Appendix is guidance and meant to serve as a supplement to the requirements listed in Appendix N.

4. Imputed Debt

Staff and the IE are opposed to the inclusion of an imputed debt adder to the price scores for all PPAs without additional information justifying the inclusion and providing greater explanation of what the additional costs attributable to imputed debt are.³⁴ NIPPC is strictly

³⁰ NIPPC Comments, 7.

³¹ IE Report, 13.

³² Staff Comments, 16.

³³ Appendix N in PGE’s Draft RFP, page 2

³⁴ IE Report, 19; Staff Comments, 11.

opposed to the imputed debt adder and included comments by a consultant, Michael Gorman, as well.³⁵

Staff “requests the Company to specify what risk factor S&P applies to PGE’s PPAs...and [that] the Company provide information from S&P explaining how it determined the risk factor it would apply to PGE.”³⁶ The IE also comments on the risk factor and posits “because many utility PPAs go through a regulatory approval process (and many have clauses that cancel the contract if it is not approved for cost recovery) it is somewhat reasonable to assume that most will have a risk factor of zero.”³⁷ S&P has determined that the PPA risk factor is 25% for PGE because the PPA costs are recovered through a regulatory power cost adjustment mechanism. This determination is explained on page 3 of “Standard & Poor’s Methodology For Imputing Debt for US Utilities’ Power Purchase Agreements,” published May 7, 2007: “In cases where a regulator has established a power cost adjustment mechanism that recovers all prudent PPA costs, we employ a risk factor of 25% because the recovery hurdle is lower than it is for a utility that must litigate time and again its right to recover costs.”

PGE applied this 25% risk factor—consistent with S&P’s methodology and their own evaluation of imputed debt for PGE—when calculating the RFP imputed debt adder. Staff claims in their comments that “PGE states its intention to use a slightly altered version of S&P’s methodology to calculate an imputed debt adder.”³⁸ However, PGE clarifies that no “altered version” was applied to the calculation of imputed debt and, again, is consistent with S&P’s methodology.

³⁵ NIPPC Comments, 14; See NIPPC Expert Report on PPA Imputed Debt.

³⁶ NIPPC Comments, 12.

³⁷ IE Report, 19.

³⁸ Staff Comments, 11.

NIPCC’s consultant report acknowledges that imputed debt results in a financial cost: “PPAs do have contractual financial obligations and do impose financial costs on utilities, including PGE, to balance the leverage risk of resource options including PPAs.”³⁹ However, the consultant objects to PGE’s imputed debt adder, not because it does not carry financial cost to PGE, but because it is “inconsistent and imbalance[d]” to not also contemplate non-PPA resources, which “also cause financial costs” to PGE.⁴⁰ The consultant details that utility-owned resources impact the “utility’s cash flows during the resource construction development” and “have investment and operating risks that are greater than those inherent in a PPA.”⁴¹

PGE’s RFP price scoring evaluation is over a project’s useful life. The utility ownership proposals’ financing costs are included in the modeling and are reflected in the required cash flow needed to offset any added leverage. The construction period for utility-owned resources, while not contemplated in the cash flows, can present some temporary impact to PGE’s balance sheet until the project is completed. Once constructed, the operating risks of the utility-owned resources is minimized by PGE’s requirement to include Long Term Service Agreements.

On the PPA side, the financing costs have not historically been included in the price scoring and modeling, which ignores the long-term impact of adding a debt equivalent upon credit rating agency ratios. The imputed debt adder’s inclusion is addressing this discrepancy and allows for a fairer comparison between both PPAs and utility-owned resources.

5. Non-disclosure agreement

NIPPC notes in their comments that PGE’s draft non-disclosure agreement reverts to the \$500,000 of liability and two-year term, rather than the \$2 million of liability and five-year term

³⁹ NIPPC Expert Report, 1.

⁴⁰ *Id.*

⁴¹ *Id.*, 10

that was approved in Order 21-460, and requests that the NDA used be consistent with what was used in UM 2166.⁴² PGE is amenable to this change and will use the same NDA template that was used in the 2021 RFP.

6. Transferability

Staff requested an update on the transferability of tax credits in their comments. The IRS has since issued the expected guidance on both Elective Pay and Transferability⁴³ for clean energy tax credits. PGE has held discussion with several brokers to gain a better understanding of the developing transferability market, and the initial analysis is that the guidance is largely administrative in nature (e.g., sellers will need to register transactions on an IRS website), and it does not propose any fundamental changes to assumptions about how the tax credits can be sold. Some transactions had already been executed prior to the guidance, and the expectation, now that the IRS guidance is out, is that sales will start increasing.⁴⁴ PGE will continue to monitor the market pricing of credits over the next few months and then incorporate the latest developments into the RFP evaluation process, but maintains the expectation that the discount on tax credit transferability will be between 5-10 percent (as evidenced by already executed transfer agreements).

7. Economic Life of Pumped Storage

Swan Lake and Goldendale note their concern regarding the current 2023 IRP useful life assumption of 38 years for pumped storage resources, which would be used in the 2023 RFP Scoring and Modeling Methodology, because of the impact to revenue requirement modeling,

⁴² NIPPC Comments, 40

⁴³ See IRS website for issued guidance: <https://www.irs.gov/credits-deductions/elective-pay-and-transferability>

⁴⁴ See Norton Rose Fulbright's insights on the issued IRS guidance. Norton notes that sales have been in the 90 cents to 93 cents range per dollar of tax credits, but many expect the price to settle around 95 cents or 96 cents. <https://www.projectfinance.law/publications/2023/june/irs-transferability-guidance/>

which calculates the benefits and costs over the economic life of an asset.⁴⁵ Swan Lake and Goldendale a useful life of 50 years is more appropriate for pumped storage resources.⁴⁶

In LC 80, PGE’s 2023 CEP/IRP docket, the same concern was raised.⁴⁷ PGE reasserts the response provided in Round 0 Comments, filed on May 31, 2023, which were as follows

PGE’s assumptions regarding useful life, cost accounting, and tax incentives are valid and well justified. PGE assumes a useful life of 38 years for pumped hydro in the 2023 CEP/IRP. This assumption was provided by the engineering firm HDR and is the same as was used in modeling of PGE's acknowledged 2019 IRP. As identified in the comments from the [Swan Lake and Goldendale projects or “Projects”], there are a wide range of estimates of economic life of pumped hydro facilities in the literature and PGE’s assumption falls within the range identified. While PGE does not dispute the claim by the Projects that it is possible for a pumped hydro project to have a useful life beyond 38 years, selecting the most optimistic useful life is not necessary to put pumped hydro on an equal footing with other proxy resources because PGE does not determine useful life of those resources by assuming the most optimistic potential lifespan for the modeling of any resources.

8. *ELCC Calculator*

NIPPC requests that PGE provide “a tool so that bidders can estimate the project’s effective load carrying capability (“ELCC”)”⁴⁸ similar to what was provided in the 2021 RFP. PGE can accommodate this request and will make available an updated ELCC calculator, based on 2023 IRP analysis, on its procurement website.

⁴⁵ Swan Lake and Goldendale Comments, 5.

⁴⁶ *Id.*

⁴⁷ *In re Portland Gen. Elec. Co., 2023 Clean Energy Plan and Integrated Resource Plan*, Docket No. LC 80, Swan Lake and Goldendale Comments, 13.

⁴⁸ NIPPC Comments, 17.

E. Affiliate structure, benchmark bid elements, and IE recommendation regarding benchmark bid cap

1. Affiliate structure

PGE is pursuing a regulated affiliate structure through an affiliate application filing (Docket UI 489) to address the ITC normalization issue. This affiliate will provide bidders the ability to submit ownership bids that can efficiently deliver the ITC value to customers. Ultimately, this supports a more robust competitive bidding process in RFPs which should support the acquisition of least-cost and least-risk resources for PGE customers.

NIPPC makes several assertions in their comments about PGE's proposed affiliate application, specifically that "there is not enough time to fully review the affiliate application," there should be provisions to "ensure fairness, transparency, and competition," and finally that any PGE-sponsored affiliate bid should be "treated as a Benchmark Bid."⁴⁹ PGE responds to those claims as follows.

2. Sufficient Time

PGE made its original affiliate application filing in September of 2021 (Docket UI 461). During the December 14, 2021, public meeting, the Commission rejected PGE's application and suggested that PGE work with stakeholders to develop more robust customer protections and submit a new application.⁵⁰

PGE engaged in extensive outreach and discussions with stakeholders in 2022, including representatives from OPUC Staff, the Oregon Citizens' Utility Board (CUB), Alliance of Western Energy Consumers (AWEC), and NIPPC. PGE worked with stakeholders to develop customer

⁴⁹ *Id.*, 21-22.

⁵⁰ *In re Portland General Electric Application for Approval of an Affiliated Interest Transaction with Portland Renewable Resource Company*, UI 461, Public Meeting Dec 14, 2021.

protection conditions, beginning with the conditions proposed by Staff and CUB in response to the UI 461 filing and modifying those conditions based on conversations with Staff, AWEC and CUB. PGE planned to re-file the application in August 2022, however before this was filed, Congress passed the Inflation Reduction Act (IRA).

The initial analysis of the IRA indicated that there was an alternative path to avoiding the ITC normalization issue. As such, PGE notified stakeholders in August 2022 that it no longer intended to file the affiliate application. However, as the IRS has provided additional guidance on the IRA, it has become clear that the ITC normalization issue remains and that there is still a need for the proposed regulated affiliate. PGE restarted conversations with Staff and Stakeholders in April 2023 and filed a new application in May 2023.

Contrary to NIPPC's claim, there has been sufficient time—almost two years—contemplating the proposed affiliate structure, which is limited in scope to only participate in PGE RFPs, and how it would interact within an RFP.

3. Customer Protection Conditions

Included with affiliate application filing are nine proposed customer protection conditions (“Conditions”) collaboratively developed between PGE and stakeholders. These Conditions are intended to hold customers harmless and provide oversight and transparency. Specifically, PGE will maintain a separation of duties and prohibit sharing of RFP-related information between individuals engaged in the development of any PRR bids and any individuals engaged in the evaluation or scoring of the bids as part of the RFP process. This is consistent with the Competitive Bidding Rules that applies to both Benchmark and affiliate bids.⁵¹

⁵¹ See OAR 860-089-0300(1)(b).

NIPPC's claim that RFPs "can be biased in favor of utility owned resources"⁵² is unwarranted given that the RFP scoring methodology and modeling undergoes scrutiny in a regulatory review process.

The affiliate is required, by the proposed Conditions, to submit bids using a Commission-approved RFP form agreement. The intent is that the affiliate will use the PPA form contract similar to other third-party PPA bidders, so that there is a level playing field between offers. However, the affiliate can only make changes to the form contract limited to those based on the characteristics of the specific bid and project, whereas third parties can negotiate all terms and conditions. There is no advantage given to affiliate bids over third-party PPA bids. The affiliate in fact eliminates the existing advantage that third-party PPA bids currently enjoy with the ITC and levels the playing field of the RFP for the benefit of customers.

4. Benchmark-like treatment

NIPPC requests that "PGE's affiliate bid should be treated as a benchmark bid subject to the provisions of the Commission rules."⁵³ NIPPC's recommendation as it relates to bid elements secured by the affiliate is not consistent with the competitive bidding rules, which expressly exclude affiliate bids from this provision of the rule.⁵⁴ However, PGE is willing to agree with this treatment and will require PGE sponsored-affiliate bids to be submitted at the same time as the Benchmark bids. All Benchmark and PGE sponsored-affiliate bids will be scored and evaluated before opening any third-party proposals. And, similar to Benchmark bids, although the rules do not require this, PGE will disclose whether any elements of a PGE sponsored-affiliate bids are owned or secured by PGE and also whether or not they will be made available to all bidders. This

⁵² NIPPC Comments, 23.

⁵³ NIPPC Comments, 25.

⁵⁴ See OAR 860-089-0300(3)(b).

should not be a requirement that carries forward into future potential affiliate bids in future RFPs, but for this 2023 RFP, PGE is willing to agree to this request.

5. Benchmark and Affiliate Teams

NIPPC recommends that PGE confirm that members of the benchmark/affiliate team were not involved in the Integrated Resource Planning process.⁵⁵ The IRP process is public, first with supporting studies and analysis posted on PGE’s IRP webpage and with monthly roundtable meetings, and then filed with the Commission. NIPPC’s request is beyond the scope of what is required in the competitive bidding rules, and therefore, PGE is not adopting NIPPC’s recommendation.

6. Recommendation of a benchmark resource cap

The IE suggests in their assessment that since the last procurement featured “a large amount of supply submitted by the benchmark team” that the Commission may want to consider a cap on the benchmark supply proposed within this or future RFPs,⁵⁶ with a suggested limit of total resource need plus a small adder. Staff asks that PGE “opine on the potential benefits and risks of such an approach.”⁵⁷ PGE Benchmark opposed the IE’s suggestion and noted that in recent history, “benchmark” is not synonymous with “utility-owned” and that limiting benchmark bids could conflict with the competitive bidding rules and would change the risk allocation of bids.⁵⁸

PGE has two primary concerns with the suggestion to impose a limit on benchmark projects. First, the competitive bidding rules were developed as a way to ensure that RFPs are

⁵⁵ NIPPC Comments, 28.

⁵⁶ IE report, 21-22.

⁵⁷ Staff Comments, 16.

⁵⁸ PGE Benchmark, 3.

competitive and transparent and likely to lead to optimal outcomes for customers and there is no basis for this limit in those rules. Second, any Commission policy that serves to limit the bids received in this or future RFPs could introduce risk to PGE’s ability to meet capacity and energy needs.

The competitive bidding rules state that utilities may “propose a benchmark bid in response to its RFP to provide a potential cost-based alternative for customers”⁵⁹ While the manner in which benchmark bids are developed—as well as who is able to develop and score benchmark bids—is clearly articulated in the competitive bidding rules, there is no statement in rule that benchmark bids are a specific resource type that should be limited. Instead, the competitive bidding rules establish the framework to ensure that the process is fair and transparent for all bidders to the RFP. PGE has developed RFPs consistent with the competitive bidding rules, and imposing further restrictions without basis in the rules should not be implemented.

Beyond the rules-based concern, PGE notes that the benchmark serves an important role in ensuring that RFPs lead to optimal outcomes for customers. A healthy benchmark response introduces competitive pressure (as a potential cost-based alternative) and encourages other bidders to price their proposal in a way that reflects maximum value for customers at the given risk level. While the argument could be made that projects will compete on price regardless of benchmark participation, the benchmark helps to ensure projects that are designed with customer benefit at the forefront.

Additionally, PGE notes that the benchmark serves an important role in providing bids to the RFP process, regardless of whether they are ultimately selected. As we work to decarbonize, PGE anticipates acquiring between 2.2 and 3.2 GW of additional resources by the end of this

⁵⁹ OAR 860-089-0300(2).

decade.⁶⁰ Limiting the volume of benchmarks, or indeed any bid type, would introduce risk in this process as projects could choose to market their offtake elsewhere at a time when PGE needs all high-value projects to move us toward the 2030 decarbonization target reliably and at the lowest cost. We therefore urge the Commission not to adopt this recommendation to limit benchmark bids.

7. PGE resources made available

Per the updated Appendix P provided along with this filing, company-owned resources will be made available by use for utility ownership bids only. This includes the approximately 300-600 acres of land located at the coordinates of 45.696, -119.797 as well as the Biglow Canyon Wind Farm's Large Generator Interconnection Agreement and transmission rights with a point of receipt at BIGLOW and point of delivery at BPAT.PGE.

The coordinates provided in Appendix P indicate that this land is part of the complex upon which the Carty Generating Station is located, and the coordinates indicate that Carty is located immediately to the west of the land to be made available. PGE's control of this land is to provide a security perimeter around existing thermal operations and critical infrastructure associated with the interconnection of Carty to BPA's system. Making this land available to third-party entities would open the complex to multi-entity operations and may degrade the security perimeter around the existing generator.

PGE further notes that any entity that plans to submit a utility-owned bid that leverages Biglow transmission rights must do so from a BIGLOW point of receipt only. That is, PGE will

⁶⁰ Portland General Electric Company, *May 31, 2023 Investor Presentation*, slide 8.
<https://investors.portlandgeneral.com/static-files/07652b7c-f4d6-4037-88af-c1556198b840>
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not accept any bid that proposes to redirect rights from BIGLOW to another point of receipt that may be acceptable on BPA's system from a flowgate perspective.

III. CONCLUSION

PGE appreciates the opportunity to respond to comments from the IE, Staff and stakeholders, and requests that the Commission approve the 2023 RFP.

DATED this 28th day of June, 2023.

Respectfully submitted,



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Portland General Electric

2023 All-Source RFP – *Draft*

August XX, 2023



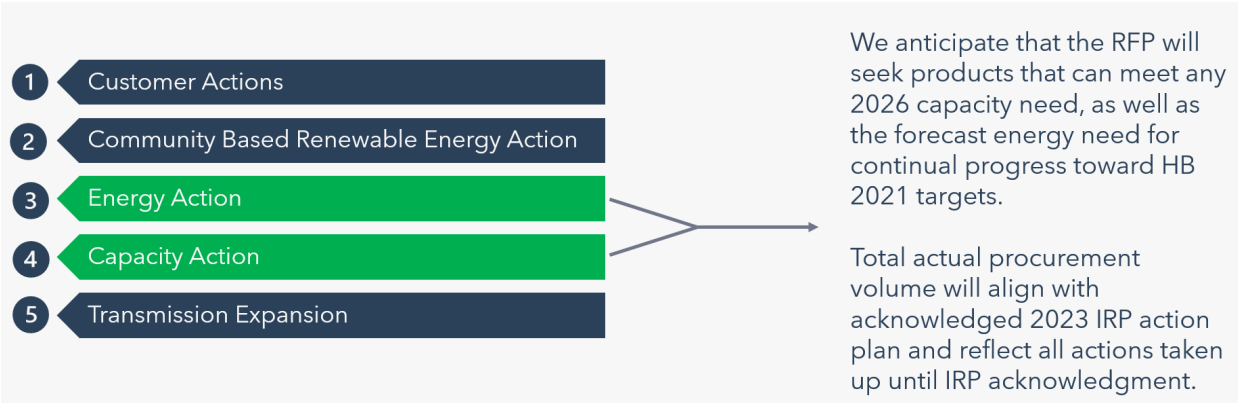
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Purpose and Scope

PGE’s 2023 All-Source Request for Proposals (RFP) is designed to execute on the combined 2023 Clean Energy Plan and Integrated Resource Plan (CEP/IRP) action plan. PGE is committed to reduce our emissions by 80% by 2030¹ while maximizing customer affordability and ensuring reliable operation of the system. The resources sought within this RFP will provide necessary progress to meet these imperatives. PGE’s 2023 CEP/IRP - filed on March 31, 2023 - identified the need to initiate a process to acquire both capacity and energy resources within the action plan window. This RFP is issued consistent with those CEP/IRP actions and the RFP process is designed so that the ultimate procurement amount reflects the 2023 CEP/IRP action plan, once acknowledged.

Figure 1 - CEP/IRP action plan and RFP scope



About PGE

Headquartered in Portland, Oregon, PGE serves just over 900,000 retail customers in 51 incorporated cities (see territory in Figure 2).

PGE owns generation assets including five gas-fired thermal plants, the Biglow Canyon, Tucannon River, and Wheatridge I wind farms, and has joint ownership in two units at Colstrip, a Montana-based coal plant. PGE also holds long-term contracts for energy from the Mid-Columbia hydroelectric projects on the Columbia River as well as several wind and solar facilities, and regularly enters into short and mid-term wholesale power supply contracts.

¹ Compared to a baseline amount, as specified in Oregon House Bill 2021 (HB 2021)

Figure 2: PGE's Service Territory



For more information, see PGE’s website: www.portlandgeneral.com.

Procurement Targets

PGE is conducting this RFP to contract for resources to meet its long-term energy and capacity needs identified and recommended for regulatory acknowledgment within PGE’s 2023 CEP/IRP action plan. To meet PGE’s long-term energy and capacity resource needs, PGE expects an ongoing incremental energy need of approximately 181 MWa every year through 2030 and also requests acknowledgement to procure resources to meet any capacity need identified in the CEP/IRP action plan, once acknowledged.

PGE’s RFP differentiates between renewable resources and non-emitting dispatchable resources. Renewable resources must be RPS eligible. Non-emitting dispatchable resources must be able to be called upon by PGE to dispatch at controlled times and qualify for the ITC. Non-emitting dispatchable resources include energy storage facilities such as battery storage and pumped hydro. Hybrid resources that combine energy storage facilities and a renewable resource will be considered renewable resources. ~~All Dispatchable resources (dispatchable or renewable) must be~~ which are online by the end

of 2025, with the exception of long lead-time pumped hydro resources, will be prioritized to meet the 2026 capacity need, and multi-phase projects.² Renewable projects must be online by the end of 2027.³

Independent Evaluator

The Public Utility Commission of Oregon (Commission or OPUC) has approved selection of Bates White as the independent, third-party evaluator (IE), to help ensure this RFP is conducted in accordance with the OPUC Competitive Bidding Rules and that all bids are evaluated consistently and impartially.⁴ The IE will report to the OPUC. During the RFP process Bates White will:

- During the Scoring and Modeling Methodology and draft RFP regulatory review, provide a report which examines the lessons learned from the 2021 All-Source RFP.
- Review PGE's 2023 All-Source RFP screening criteria for bidder eligibility.
- Participate in any pre-bid conferences and workshops and present on the role of the IE in the competitive solicitation.
- Monitor all aspects of the solicitation process for the final shortlist, including the following:
 - 2023 All-Source RFP(s) screening.
 - Communications between Bidders and PGE before and after bids are due.
 - Any requested bidder updates.
 - Any amendments to the 2023 All-Source RFP issued by PGE.
 - Evaluation and ranking of bids.
 - Selection of the initial short-list of bids.
 - Evaluation of capacity factor verification report (to be provided by independent third-party expert) for variable energy resource bids.
 - Selection of the final shortlist.
- Audit the bid evaluation process and validate the evaluation criteria, methods, models, and other solicitation processes have been applied consistently and appropriately to all bids.
- Verify assumptions, inputs, and results are appropriate and reasonable.
- Provide supplemental reports, scores, and evaluations for the following:
 - An assessment of the reasonableness of the score(s) for PGE's benchmark resources.
 - An independent score of PGE benchmark resource(s) and all or a sample of bids to determine whether the selections for the initial and final shortlists are reasonable.
 - An evaluation of the unique risks and advantages associated with available ownership structures (including the benchmark resource(s)) as well as third party bids where applicable.

² Pumped hydro resources must be online by 12/31/2025. ~~PGE will consider multi-phase projects, with the first phase coming online by 12/31/2025 and all subsequent phases coming online by 12/31/2026.~~

³ PGE will consider multi-phase renewable projects, with the final phase coming online by 12/31/2027.

⁴ Order No. 23-146, adopting Staff recommendation 1.

- An assessment of the design and results of sensitivity analyses of bid rankings performed by PGE and final shortlist sensitivities.
- An assessment of consistency with PGE's acknowledged CEP/IRP.
- Compare the IE's and PGE's scoring and evaluation of the competing bids and attempt to reconcile and resolve any scoring differences.
- In consultation with OPUC Staff, participate in additional meetings and/or workshops with parties, hosted by Staff, related to the final shortlist selection and request for acknowledgment of the final shortlist.
- Identify and communicate conflicts of interest between Bidders, the IE, and PGE as soon as they are identified. The IE shall summarize all known conflicts in its closing report.
- Participate in OPUC proceedings on acknowledgment of the final shortlist. Participation would include written comments filed with the OPUC and oral comments at an OPUC public meeting or hearing. This may include a formal presentation.
- Issue a Closing Report assessing PGE's selection of the final shortlist, including all aspects of the solicitation process and the IE's involvement, observations, conclusions, and recommendations.
- Monitor contract negotiation process through final resource selection. IE will file a final resource selection closing report with the Commission no later than 30 days after final resource selection. IE will respond to any Staff or Commission questions on the final IE report.

Staffing Principles

In accordance with OAR 860-089-0300, PGE has ensured that any individual participating in the development of this RFP (or who will participate in the evaluation of bids) was not involved with the preparation of a benchmark or affiliate bid and was screened from that process. PGE has designated individuals with the appropriate levels of expertise and technical knowledge to RFP and benchmark bid development teams to ensure that they do not interact on RFP related matters.

In addition, as a transmission provider, PGE complies with the Standards of Conduct adopted by the Federal Energy Regulatory Commission (FERC) which govern interactions between PGE's Transmission Function Employees (TFEs) and PGE's Marketing Function Employees (MFEs) and requires these employees to function independently of each other. Also, employees who are neither MFEs nor TFEs cannot share transmission information with MFEs under FERC's "no-conduit rule."

RFP Schedule

In partnership with OPUC Staff and Stakeholders, PGE has developed the following schedule. The RFP schedule is designed to make timely progress toward PGE's capacity needs and HB 2021 compliance requirements and is subject to change based on regulatory timing. PGE will update the schedule to reflect any timing changes.

- January 30, 2023 -PGE files waiver with Commission to extend services of Bates White, who served as the 2021 RFP IE.
- March 2, 2023 - Public workshop in advance of PGE's draft.
- May 19, 2023 - PGE submits final draft Renewable RFP to OPUC for approval.
- ~~July 14, 2023 - Notice of Intent to Bid due.~~

- August 21, 2023 - PGE issues Final RFP.
- August 25, 2023 - Post-issuance bidder conference.
- September 4, 2023 - Notice of Intent to Bid due.
- September 15, 2023 - Benchmark bid due.
- October ~~13~~6, 2023 – RFP bids from Bidders due.
- ~~November~~October 130, 2023 - Initial shortlist identified.*
- November ~~28~~17, 2023 - Best and final price update.*
- ~~February~~January 23, 2024 – PGE submits request for acknowledgment of shortlist to OPUC.* †
- Q2 2024 - Final contracts executed with winning Bidders as applicable.*

*These dates are subject to change depending on the quantity and complexity of bids received and should circumstances require.

†Barring any major schedule changes in regulatory docket LC 80, PGE would not intend to submit this request prior to the CEP/IRP acknowledgement date, which is currently targeted for 1/25/24.

Guidelines for Submitting Proposals

This section describes the guidelines that parties submitting bids (Bidders) under this RFP must follow when submitting bids.

PGE's RFP Website

PGE's RFP website, portlandgeneral.com/rfp, is the platform for communication and bid materials exchanges between Bidders and PGE.

Features of the site include:

- The ability to download all public RFP documents, including copies of this document and all related contracts, term sheets and appendices.
- An announcement board for posting of information for the public and Bidders.
- The capability for Bidders to anonymously post questions and comments that can be seen by all users, and for PGE to provide answers.

Procedural and Commercial Questions

All correspondence regarding procedural questions, bid submissions and questions related to product characteristics, or terms and conditions, should be submitted to PGE's RFP website at portlandgeneral.com/rfp. PGE, in consultation with the IE, as appropriate, will post answers to questions from Bidders, stakeholders, and other interested parties on the site.

PGE's RFP was approved for issuance - with conditions - by order of the Commission as part of the [TBD], 2023 Special Public Meeting. If a posted document is identified as inconsistent with the Commission order, PGE will correct the document, post updated documentation, and notify Bidders as soon as is practicable.

Notice of Intent to Bid

Bidders who intend to participate in the RFP must notify PGE via email at rfp@pgn.com with the independent evaluator copied at frank.mossburg@bateswhite.com, by ~~July~~ ~~September 14~~ ~~48~~, 2023. The intent to bid should include the entity's name and contact details.

Submitting Bids

Bidders may submit one or more bids responding to the requested energy product(s). All bids must be submitted using the bid form that PGE will provide on the RFP website, portlandgeneral.com/rfp. Completed bid forms and supporting documentation must be sent via email to rfp@pgn.com with the IE copied (Frank.Mossburg@bateswhite.com) once PGE notifies bidders that the bid window is open. Bids are due no later than 12:00 p.m. Pacific Prevailing Time on October ~~13~~, 2023. The bid form will require Bidders to submit information in support of their bids, including, but not limited to, project description, transaction type and price, project development criteria and developer experience, interconnection and scheduling services, tax benefits, permitting, project resource characteristics, operating costs, credit and financial, etc.

PGE's Benchmark Bid must be submitted no later than 12:00 p.m. Pacific Time on September 15, 2023, and will be evaluated, scored, and delivered to the IE prior to the receipt of third-party bids.

All Bidders with bids on the initial shortlist will be invited to provide best and final price updates no later than November ~~28~~ ~~17~~, 2023.

Bid Fee

To help defray the costs of the IE and encourage high quality bids and qualified Bidders, each Bidder in this RFP must pay a non-refundable bid fee of \$10,000. A bid may consist of one base proposal in addition to two alternatives for the same bid fee. The alternatives may consist of including additional technology, different volume, contract term, in-service date, and/or pricing structure for the same resource at the same location.

A proposal for a different bid at a different location will be considered a separate bid and will be subject to a separate bid fee.

Bid fees must be remitted via electronic funds transfer to PGE. For purposes of assessing bid fees, the IE, in consultation with PGE, shall confirm whether a Bidder's submission constitutes one or more bids based on the criteria described above.

Submitting a Confidentiality and Non-Disclosure Agreement

Bidders are required to sign the Confidentiality and Non-Disclosure Agreement that is available at portlandgeneral.com/rfp (and is included as Appendix L to this RFP) prior to the bid submission deadline. The Confidentiality and Non-Disclosure Agreement must be submitted to PGE via email (rfp@pgn.com with the independent evaluator copied at frank.mossburg@bateswhite.com). Due to the need to ensure uniform treatment of all confidential information, PGE will not accept changes to the Confidentiality and Non-Disclosure Agreement.

PGE will treat any proprietary and confidential information contained in a bid, in a manner consistent with the terms of the Confidentiality and Nondisclosure Agreement and any Protective Orders issued

by the OPUC, provided that such information is clearly identified by the Bidder on each confidential page as “Confidential” or “Confidential Information.” Any Confidentiality and Non-Disclosure Agreement received by PGE via email (to: rfp@pgn.com, cc: frank.mossburg@bateswhite.com) prior to August 25th 2023 will be countersigned and returned to the Bidder before September 12th 2023.

Validity of Price and Offer

By submitting a bid, the Bidder acknowledges and agrees that the terms of its proposal shall remain irrevocable for the earlier of 250 days after the bid responses are due or when PGE issues a written release of the bid at or before the time the initial or final, as applicable, shortlist is issued. Pricing may be conditional on a commercial contingency, but all commercial contingencies must be satisfied or waived prior to Commission’s acknowledgement of the final shortlist in order to remain a candidate bid on the final shortlist. Pricing may not be contingent on another offtake agreement for a portion of a facility to guarantee pricing. For Bidders that are participating in the 2022 BPA Cluster Study Process, PGE requests that such Bidders incorporate estimated costs associated with those upgrades in their bids, if applicable. PGE will not accept revisions to the price based on study results.

Bid Evaluation Criteria

Bids will be assessed by PGE and the IE on the project’s economic competitiveness and portfolio economic risk. All bids will be evaluated within an individual offer analysis to assign a bid price score. PGE’s price score comprises 100% of our evaluation criteria, reflecting PGE’s desire and commitment to obtain the best possible value for our customers. Additional description of the bid evaluation criteria is provided in Appendix N – Scoring and Modeling Methodology.

Reservation of Rights

This RFP is not, and shall not be construed to be, an offer by PGE. PGE is not bound to enter into negotiations or execute an agreement with, or purchase any products from, any Bidder as a result of this RFP. No rights shall be vested in any Bidder, individual or entity by virtue of its preparation to participate in, or its participation in, this RFP. No binding commitment shall arise on the part of PGE to any Bidder under this RFP until and unless the parties execute definitive agreements that become effective in accordance with their terms.

Each Bidder shall be solely responsible for all costs it incurs in preparing to participate in, participating in, or responding to this RFP.

The bids received will be evaluated and selected based on the information supplied by each Bidder pursuant to this RFP. PGE reserves the right to modify or withdraw from this RFP process, or modify the schedule and any provisions contained herein, for any reason. PGE also reserves the right, consistent with the Competitive Bidding Rules, to make purchase commitments at any time to suppliers not participating in this RFP process.

PGE reserves to itself:

- The selection of final short-listed bids and the awarding of contracts, if any, in the exercise of its sole discretion.

- The right to include projects on the final shortlist with energy and nameplate capacity amounts in excess of its target to ensure sufficient back-up bids are available should some Bidder(s) materially depart from their bid(s) during the negotiation phase.
- The right to reject any and all bids, and any portion of a specific bid for any reason.
- The right to waive any immaterial non-conformity in any bid received.
- The right to prioritize bids on the final shortlist that are most likely to overcome, in PGE's discretion, development and delivery risk.
- The right to award a contract to a Bidder based on a combination of price, a quantitative and qualitative assessment of portfolio fit, and post-bid negotiations.

Document Retention

PGE will retain all bid materials supplied to it and pertinent information generated internally by it in connection with this RFP process in accordance with PGE's document retention policies.

Requested Products

Consistent with PGE's 2023 CEP/IRP Action Plan, PGE is looking for resources to meet capacity needs identified and procure approximately ~~362-543~~ MWa (aligned with CEP/IRP target of 181 MWa annually for 2025 ~~and through 2027~~) of renewable resources for all cost-of-service customers, and, consistent with Commission Order No. 21-091⁵, PGE is looking to procure up to 100 MW of renewable resources for the PGE supplied option of the Green Energy Affinity Rider (GEAR). ~~DA~~ Dispatchable resources participating in this solicitation ~~must that are be~~ online by 12/31/2025, with the exception of pumped hydro resources ~~that which~~ must be online by 12/31/2025⁶. ~~will be prioritized:~~ Renewable resources must be online by 12/31/2027. Bidders may propose projects that have multiple phases for development, ~~but PGE will only evaluate those phases proposed to be online by 12/31/2026 at the latest and the first phase must be online by 12/31/2025. The phase(s) that are scheduled to be online by 12/31/2025 must meet the minimum size requirements. However, A~~ any phases that ~~is~~ are scheduled to be online 1/1/2026 or later will not be considered to support the identified 2026 capacity need. For example, a 200 MW wind facility could have a 120 MW phase 1 which comes online 12/31/2025 and an 80 MW phase 2 which comes online by 12/31/2026. Only the 120 MW phase 1 in this example will contribute to meeting the identified 2026 capacity need.

Bids that propose renewable resources must qualify for Oregon's RPS, and they must include all environmental attributes generated by such renewable resources, including Renewable Energy Certificates. Bidders will be responsible for ensuring the RECs that are generated from such renewable resources are bundled with the energy as defined in ORS 469A.005, and that they are established

⁵ Order 21-091 Available at: <https://apps.puc.state.or.us/orders/2021ords/21-091.pdf>

⁶ PGE will also consider other long lead-time technologies that satisfy PGE's eligibility requirements, have been commercially proven, and can be shown to require additional construction time beyond what is possible by 2025.

through Western Renewable Energy Generation Information System (WREGIS), consistent with OAR 330-160-0020.

Non-emitting dispatchable resources must have the capability to be dispatched at specified times when called upon by PGE. Examples of these resources include pumped hydro, lithium ion battery storage, and geothermal resources. PGE will utilize portfolio analysis to identify the optimal combination of non-emitting dispatchable resources and renewable resources to procure.

For renewable resources and non-emitting dispatchable resources, PGE will consider both physical purchases through a Power Purchase Agreement (PPA) as well as ownership structures, including the acquisition of development rights, joint ownership, and build-own-transfer agreements. PGE will also consider a combination of these structures.

PGE reserves the right to vary from the procurement size targets set forth in Table 1 below based on its evaluation of the bids. This may include not procuring any resources as part of this RFP.

Table 1

Product	Minimum Size	Target Size	Commercial Online Date	Minimum Agreement Term	Maximum Agreement Term
Renewable Resource	3 MW for solar resources and 10 MW for all other resources	354362 MWa for all Cost-of-Service Customers (aligned with CEP/IRP target of 181 MWa annually for 2025 and through 2027 ⁶) and 100 MW for the Green Future Impact program	12/31/202 7 ⁵ , additional phases can come online by 12/31/2026	PPA: 15 years	PPA: 30 years
Non-Emitting Dispatchable Resource	10 MW for all storage resources	PGE’s remaining capacity need per the acknowledged CEP/IRP action plan, adjusted for recommended	12/31/202 7 ⁵ , priority given to 12/31/2025 projects ⁵ ; additional phases can come online by 12/31/2026	PPA: 15 years	PPA: 30 years

		renewables acquisitions	Pumped hydro can come online by 12/31/2029 8		
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Minimum Requirements

As part of this RFP, PGE intends to employ a minimum bidder requirement screen as the first step in the evaluation process. For additional discussion of these requirements, please see Appendix N.

Contract Terms and Conditions

Utility Owned Commercial Structures

Ownership bids may include, but are not limited to, sales of existing assets, acquisition of project development rights, [Asset Purchase Agreement \(APA\)](#) & [Engineering Procure Construction \(EPC\)](#) agreements, Build Transfer Agreements (BTA) or joint ownership. PGE will also consider hybrid structures that include both an ownership component and a power purchase agreement (e.g., the sale of a phase or portion of a project with an off-take agreement for the balance or a PPA with purchase option or obligation). In addition, PGE will consider affiliate ownership opportunities delivered to PGE customers through a power purchase agreement.

Bids for new, utility ownership resources are expected to be procured and constructed in accordance with PGE's established technical requirements. Appendix M details PGE's technical specification requirements for the purchase of new wind, solar, and battery energy storage facilities. Bidders submitting ownership bids must review the technical specifications to ensure that the bid and associated price reflects PGE's identified requirements. Bidders submitting a bid with a technology other than wind, solar or battery energy storage, should review and redline the "General Specifications" section provided in the battery energy storage technical specifications found in Appendix M.

Should a Bidder wish to offer a product different than that suggested by the technical specifications, the Bidder is required to identify through a template exception log, provided within the bid form, which specifications the Bidder takes exception to and identify a cost estimate necessary to align the Bid with the technical specifications. PGE will consider whether the proposed exception is acceptable before applying any owner's cost adjustment necessary to align the Bid with the technical specifications.

Bidders are not required to redline form agreements, which are included in this RFP for reference purposes only. All definitive agreements between a Bidder and PGE are subject to good faith negotiations after the Commission acknowledges the final shortlist. Bids will be evaluated in accordance with the scoring criteria set forth in Appendix N of this RFP.

Third Party Owned Commercial Structures

Bids may include various types of power purchase agreement structures.

Bidders are not required to redline form agreements, which are included in this RFP for reference purposes only. All definitive agreements between Bidder and PGE are subject to good faith negotiations after the Commission acknowledges the final shortlist. Bids will be evaluated in accordance with the scoring criteria set forth in Appendix N of this RFP.

Bid Evaluation Process

Overall Process

Bid Submission (described Above)

As described above in the guidelines for submitting bids, bids must be submitted via email to rfp@pgn.com with the IE copied (Frank.Mossburg@bateswhite.com) Bids for benchmark resources are due on September 15, 2023 and bids for all other resources are due on October 6th, 2023. Bidders must provide PGE with all data requested in the bid evaluation form. PGE will score any benchmark resource bids before opening or scoring any other bids, in compliance with applicable Oregon Administrative Rule. In the instance that PGE has a question regarding a bid, PGE will issue a question to the Bidder and require a response from the Bidder within three (3) business days. In the instance that PGE does not receive a response, the bid may not pass the bid screening or might be subject to a scoring adjustment due to lack of pertinent information.

Initial Bid Screening

PGE will screen each bid based on the minimum bidder requirements set forth in Appendix N of this RFP. Bids that do not sufficiently meet PGE's minimum bidder requirements will not receive a score and will not be considered for the initial shortlist. Bidders should note that there are different minimum requirements for the initial shortlist and the final shortlist as it pertains to credit, site control, permitting, interconnection, and transmission.

Initial Shortlist Determination

After PGE determines that a bid meets the minimum bidder requirements to be considered for the initial shortlist the bid will be evaluated to determine a score in accordance with the scoring and modeling methodology included in Appendix N. At this stage each bid will be evaluated individually and will receive a score that is specific to that bid. Scores for renewable resources will be determined separately from the scores for non-emitting dispatchable capacity resources. PGE will make selections

to the initial shortlist based on scores and other factors (e.g., transaction type, technology, and location) in order to provide for resource diversity.

Initial Shortlist Notification & Additional Actions

Once PGE has determined which resources are on the initial shortlist, it will notify Bidders and ask for additional documentation or updates regarding letters of credit for non-investment grade Bidders, site control, permitting, the completed facilities study for interconnection, and any updates on the transmission plan of service and/or the BPA TSR Study and Expansion Process. Bidders must provide these updates to be considered for the final shortlist. All resources on the initial shortlist will also be given the chance to provide a best and final price update. For bids that propose resource ownership, PGE will also require that the Bidder supplies redlines to the technical specifications to be on the final shortlist. PGE plans to reach out to Bidders on the initial shortlist on October 30, 2023 and requires that Bidders reply by November 17, 2023.

Final Shortlist Bid Screening

Once PGE receives the requested information from the Bidder with bid(s) on the initial shortlist, PGE will examine the information to determine if the resource still meets the minimum bidder requirements for this RFP. If the criteria are still met, PGE will include the bid in its portfolio analysis.

Final Shortlist Determination

PGE will use portfolio analysis to develop updated price scores that look at combinations of bids. The final shortlist will be selected based on the portfolios of resources that perform the best. PGE may include projects on the final shortlist that are in excess of its target procurement amounts to ensure sufficient back-up bids are available should some Bidder(s) materially depart from their bid(s) during the negotiation phase.

Notification and Negotiation

Once the final shortlist has been determined, PGE will notify Bidders whether their bids were selected. PGE will then proceed with negotiations with top performing bids. PGE reserves its discretion to end negotiations and move on to remaining Bidders if entities are unable to guarantee the bid price, have unresolved commercial contingencies, or are otherwise unable to reach agreement with PGE.

Bidder Feedback

Upon request, PGE will offer feedback to unsuccessful Bidders on the competitiveness of their bids. PGE will make available this feedback after executing all agreements with successful Bidders, or after announcing the conclusion of this RFP solicitation. PGE will not disclose any third-party confidential information through this voluntary feedback process. PGE will identify the relative performance of their bid by identifying a bid's quartile performance in score. Furthermore, as appropriate, PGE will identify all minimum thresholds the bid did not achieve.

Appendices A-~~D~~C- [intentionally left blank]

[Appendix D: Form BTA](#)

Appendix E: Renewable Resource Form PPA

Appendix F: Form Storage Capacity Agreement

Appendix G: [Renewable Resource and Storage Capacity Form PPA](#)

Appendix H: Form APA

Appendix I: Form EPC

Appendix J: Form Parent Guarantee

Appendix K: Credit Guidance

Appendix L: NDA

Appendix M: Technical Specifications

Appendix N: Approved Scoring and Modeling Methodology

Appendix O: Bid Form

Appendix P: Benchmark Details



PGE Corporate Headquarters

121 S.W. Salmon Street | Portland, Oregon 97204

portlandgeneral.com

BUILD TRANSFER AGREEMENT

by and between

[Seller's Name] as Seller,

and

Portland General Electric Company

as Purchaser

[Date]

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BUILD TRANSFER AGREEMENT

THIS BUILD TRANSFER AGREEMENT (the “Agreement”) is made and entered into on [Date] (the “Execution Date”), by and between [SELLER’S NAME], a [State] [Type of Organization] (“Seller”), and **PORTLAND GENERAL ELECTRIC COMPANY**, an Oregon corporation (“Purchaser”). Seller and Purchaser are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Purchaser is a public utility engaged in the generation, transmission, distribution, and sale of electric energy, capacity, and ancillary services in the State of Oregon.

B. Seller and its Affiliates hold or will as of the Closing, as defined below, hold all assets, properties, rights, and interests (whether real, personal, or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site (as defined below)) which relate to or are used or held for use in connection with the Project (as defined below).

C. Seller desires to sell and assign to Purchaser, and Purchaser desires to purchase and assume from Seller, all assets, properties, rights, and interests (whether real, personal, or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site (as defined below)) of Seller and its Affiliates which relate to or are used or held for use in connection with the Project, all on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants, and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

ARTICLE I DEFINITIONS; USAGE

1.1 Definitions. Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 1.1.

“Action” means any suit, claim, proceeding, arbitration, audit, or investigation by or before any Governmental Authority or arbitral tribunal.

“Additional Report” has the meaning set forth in Section 5.10.3.

“Affiliate” of any Person means any other Person directly or indirectly Controlling, directly or indirectly Controlled by, or under direct or indirect common Control with such Person.

“Agreement” has the meaning set forth in the Preamble of this Agreement.

“ALTA Survey” means a current survey with respect to each parcel of real property comprising the Project Site upon which Project Facilities are or will be located, prepared and certified by Surveyor and that complies with the 2021 ALTA/NSPS Minimum Detail Requirements for Land Title Surveys and disclosing the location of all existing improvements, plottable encumbrances, easements, rights of way, encroachments, roadways, utility lines, set back lines, and other matters showing access affirmatively to public streets and roads, and including an overlay of the proposed Project Facilities to be installed on the Project Site as indicated by the Project Site Plan.

“Ancillary Agreements” means (a) the Bill of Sale, (b) the Assignment and Assumption Agreements, (c) and the LTSA.

“Anti-Forced Labor Law” means (i) the anti-forced labor provisions of Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307), (ii) the Uyghur Forced Labor Prevention Act (Public Law 117–78; 117th Congress; Dec. 23, 2021; H.R. 6256; 135 STAT. 1525), (iii) any other law pertaining to Forced Labor, and (iv) any laws, rules, regulations, guidelines, comments, petitions, investigations, proceedings or actions in connection therewith or otherwise affecting the importation or use of good produced by forced labor.

“Assignment and Assumption Agreements” has the meaning set forth in Section 2.5.1(b).

“Assumed Liabilities” has the meaning set forth in Section 2.1.5(b).

“Bankruptcy” means, with respect to a Person, that such Person (a) commences a voluntary case under the Bankruptcy Code; (b) files a petition seeking to take advantage of any Bankruptcy Laws; (c) consents to or fails to contest in a timely and appropriate manner any petition filed against it in an insolvency case under the Bankruptcy Laws; (d) applies for, or consents to or fails to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of a substantial part of its assets; (e) becomes insolvent, admits in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due; (f) makes a general assignment for the benefit of creditors; (g) takes any action for the purpose of effecting any of the foregoing; or (h) has a case or other proceeding commenced by a third party against it seeking (i) relief under any Bankruptcy Laws or (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of such Person of all or any substantial part of its assets, and such case or proceeding continues undismissed or unstayed for a period of sixty (60) days.

“Bankruptcy Code” means Title 11 of the United States Code, as amended from time to time, or any similar federal or state Law for the relief of debtors.

“Bankruptcy Laws” means the Bankruptcy Code and all other liquidation, bankruptcy, assignment for the benefit of creditors, conservatorship, moratorium, receivership, insolvency, rearrangement, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions in effect from time to time.

“Bill of Sale” has the meaning set forth in Section 2.5.1(a).

“Books and Records” means any and all data, books, records, files, documents, instruments, papers, material correspondence that can be reasonably and practically provided, journals, deeds, licenses, Permits, computer files and programs, studies and reports (including environmental and construction studies and reports), annual operating plans, monthly operating reports, operating logs, operations and maintenance records, safety and maintenance manuals, incident reports, standard OSHA logs, design documents, Job Books (as defined under the EPC Agreement), quality documentation and reports, hazardous waste disposal records, procedures, and similar items, in each case, (a) in all formats in which they are reasonably and practically available, including electronic, where applicable, and (b) in the possession or control of Seller or its Affiliates and to the extent the same relates to Seller, the Project Site, or the Project, including the Project Assets, including any of the foregoing received in connection with or delivered pursuant to the Project Contracts and the Project Real Property Agreements, but excluding (i) documents subject to attorney-client privilege or information from third parties subject to confidentiality restrictions binding on Seller or its Affiliates (provided that Seller shall use reasonable efforts to obtain a waiver of such confidentiality restrictions); (ii) any Books and Records pertaining to Excluded Assets or Excluded Liabilities; (iii) the in-house, proprietary Intellectual Property developed and owned by Seller or its Affiliates and used in the development, construction, ownership, and operation of their generation fleet (not required for ownership or operation of the Project Site or Project by a third party), as set forth on Schedule 1.1(n); (iv) all Contracts between Operator and any of its subcontractors; or (v) any Books and Records pertaining to Construction Costs (including any (A) Subcontracts or (B) records, purchase orders, pricing lists on similar materials related to any Subcontracts).

“Business Day” means any day except Saturday, Sunday and any day on which commercial banks are required to be closed in the State of Oregon.

“Change in Law” has the meaning set forth in the EPC Agreement.

“Change of Control” means the occurrence of any one of the following events with respect to Seller or any direct or indirect owner of a majority of the ownership interests in Seller (a) any consolidation or merger of Seller or such owner in which such entity is not the continuing or surviving entity, or (b) a sale or conveyance of any direct or indirect ownership interest in Seller following which Seller’s ultimate parent entity no longer, directly or indirectly, controls Seller or (c) a change in the possession, direct or indirect, of (i) the power to direct or cause the direction of the management and policies, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, directly or indirectly, of the majority voting securities or any partnership or other ownership interest, of Seller.

“Claim” means any demand, claim, action, investigation, legal proceeding (whether at law or in equity), or arbitration.

“Claim Notice” has the meaning set forth in Section 8.3.1.

“Claim Threshold” has the meaning set forth in Section 8.4.1.

“Closing” has the meaning set forth in Section 2.4.

“Closing Date” has the meaning set forth in Section 2.4.

“Closing Date Conditions” means the conditions precedent to the Closing Date set forth in Section 6.1 and Section 6.2.

“Closing Date Estoppels” has the meaning set forth in Section 6.1.8(c).

“Closing Date Title Objections” has the meaning set forth in Section 5.4.2.

“Closing Payment” has the meaning set forth in Section 2.2.2(b).

“Code” means the Internal Revenue Code of 1986, as amended.

“Commercially Reasonable Efforts” means, with respect to a given action or desired result, the efforts that a sophisticated energy industry company acting reasonably under similar circumstances would use to take such action or cause such result to occur within the time contemplated by this Agreement but which does not require the performing Person to expend any funds, assume Liabilities, or suffer any other detriment, other than expenditures, Liabilities, or effects that are customary and reasonable in nature and amount in the context of taking such given action or pursuing the desired result.

“Completion Certificate(s)” has the meaning set forth in the EPC Agreement.

“Confidential Information” has the meaning set forth in Section 13.6.1.

“Consent” means consents, approvals, exemptions, waivers, authorizations, filings, registrations, and notifications.

“Construction” means construction as such term is used in Code Sections 45(b)(7) and (8) and 48(a)(10) and (11) and the PWA Guidance.

“Construction Costs” means the aggregate of any and all costs and expenses incurred or accrued by or on behalf of Seller, any of its Affiliates or any prior developer of the Project, to site, design, develop, engineer, procure, supply, construct, interconnect, permit, startup, commission, or test the Project or any parts or components thereof or materials used therein (including the Project Assets), in each case, in order for the Project (including the Project Assets) to achieve Project Substantial Completion and Final Completion, including all amounts owing under the Project Contracts to achieve Project Substantial Completion and Final Completion; provided, however, that “Construction Costs” shall not include any such amounts owing under the EPC Agreement that are the result of any Scope Change Order that is issued by Purchaser after the Closing Date without the express written consent of Seller (unless such Scope Change Order is caused by the acts or omissions of Seller, except due to Purchaser Caused Delays) and such Scope Change Order results in an increased payment obligation due to the EPC Contractor (i.e., a payment obligation due to the EPC Contractor greater than that provided for in the EPC Agreement in effect as of the date such Scope Change Order is issued) (unless such Scope Change Order is caused by the acts or omissions of Seller, except due to Purchaser Caused Delays).

“Contract” means any written agreement, lease, license (other than a Permit), note, bond, evidence of Indebtedness, mortgage, indenture, security agreement, purchase order, binding bid, or other instrument or contract.

“Control” of any Person means the possession, directly or indirectly, of the power to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any secured lender of such Person.

“Curative Actions” means Seller’s affirmative actions, including obtaining Curative Documents, curing an Initial Title Objection or Closing Date Title Objection, as applicable, by modifying the Project such that the applicable Initial Title Objection or Closing Date Title Objection (a) does not have, and would not reasonably be expected to have, a material adverse effect on the development, permitting, construction, operation, use, or maintenance of the Project, including the cost of operation and maintenance of the Project, and (b) does not have, and would not reasonably be expected to have, a material adverse effect on the capacity, availability, operations, reliability, schedule, or safety (including safety of construction) of the Project.

“Curative Documents” means all instruments, agreements, and other documents, obtained by Seller in order to cause the Title Company to extend title coverage with respect to the Project Site over Initial Title Objections or Closing Date Title Objections, as applicable.

“Delay LDs” has the meaning set forth in Section 5.9.1.

“Delay LD Cap” has the meaning set forth in Section 12.3.

“Disclosure Items” has the meaning set forth in Section 5.8.1.

“Dispute Period” has the meaning set forth in Section 8.3.2.

“Easements” means easements, rights-of-way, licenses, occupancy or encroachment permits, or similar entitlements which are used, or to be used, for or in the development, construction, ownership, operation, use, or maintenance of the Project.

“Effective Date” has the meaning set forth in Section 2.1.1.

“Emergency” means a situation or circumstance that constitutes a risk of (a) imminent physical injury to any person on or about the Project Site, (b) an imminent negative safety impact at the Project or the Project Site, (c) an imminent material financial loss or damage to the Project, or (d) an imminent violation of applicable Law or any Project Contract.

“Environmental Claim” means any written notice, Claim, complaint, or Action by any Person alleging any actual or potential Liability or violation under any Environmental Law.

“Environmental Condition” means the Release to the environment of Hazardous Materials, including any migration of Hazardous Materials through air, soil, or water.

“Environmental Law(s)” means any applicable Law that relates to pollution, occupational safety, protection of occupational health, or the protection of the environment, including, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et

seq., (b) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401 et seq., (e) the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. § 5101 et seq., (f) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., (g) the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629, (h) the Oil Pollution Act, 33 U.S.C. § 2701 et seq., (i) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., (j) the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j, (k) the Federal Insecticide, Fungicide, & Rodenticide Act, 7 U.S.C. § 136 et seq., (l) the Endangered Species Act, 16 U.S.C. § 1531 et seq., (m) the Clean Water Act, 33 U.S.C. § 1251 et seq., (n) National Environmental Policy Act, 42 U.S.C. § 55 et seq., (o) the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq., (p) the Bald and Golden Eagle Protection Act, (q) Archeological Resources Protection Act, 16 U.S.C. § 470aa et seq., (r) National Historic Preservation Act, 54 U.S.C. § 300101 et seq., and (s) state equivalents to items (a) through (r); provided, however, that the term “Environmental Law” shall not include any Law relating to worker health or safety matters to the extent not related to human exposure to hazardous or toxic materials, wastes, or substances.

“EPC Agreement” means an Engineering, Procurement and Construction Agreement by and between Seller and the EPC Contractor, in the form of Exhibit E.

“EPC Contractor” means the counterparty (other than Seller) to the EPC Agreement.

“Equipment Warranty and Performance Guarantees Agreement” means the Equipment Warranty and Performance Guarantees Agreement substantially and in all material respects in the form of Exhibit O attached hereto.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate(s)” means any entity that, together with a Person, would be deemed a single employer within the meaning of Code Section 414(b), (c), or (m) or ERISA Section 4001(b).

“Excluded Assets” means the items listed on Schedule 1.1(a).

“Excluded Liabilities” has the meaning set forth in Section 2.1.5(a).

“Execution Date” has the meaning set forth in the Preamble of this Agreement.

“Facility” means “facility” within the meaning of Code Section 45(d)(1) and Internal Revenue Service Revenue Ruling 94-31.

“FERC” means the Federal Energy Regulatory Commission.

“Final Completion” has the meaning set forth in the EPC Agreement.

“Final Completion Date” has the meaning set forth in the EPC Agreement.

“Firm Date” means the date on which all of the conditions listed in Section 6.3, Section 6.4 and Section 6.5 have been satisfied (or waived by the Party entitled to do so), Seller has executed

and delivered the Seller Firm Date Certificate in accordance with Section 6.7 and Purchaser has executed and delivered the Purchaser Firm Date Certificate in accordance with Section 6.6.

“Firm Date Conditions” means the conditions precedent to the Firm Date set forth in Section 6.3, Section 6.4, and Section 6.5.

“Firm Date Permits” means all Permits required by applicable Law and Prudent Operating Practices for the development, design, engineering, supply, construction, installation, testing, and commissioning by Seller of the Project at the Project Site, all of which are listed on Part B of Schedule 1.1(b).

“Firm Date Reports” means the Reports listed on Schedule 1.1(c).

“Firm Date Required Consents” means the Consents listed on Schedule 1.1(d).

“Firm Transmission Agreements” means [describe transmission agreements], which are listed on Schedule 1.1(r).

“Force Majeure Delay” means, subject to Section 5.15, a delay in Seller’s ability to achieve Project Substantial Completion by the Guaranteed Substantial Completion Date because of a Force Majeure Event; provided, however, in no event shall Force Majeure Delay exist to the extent the Closing Date Condition in Section 6.1 is not satisfied other than due to facts or circumstances otherwise constituting a Force Majeure Event.

“Force Majeure Event” means any event or circumstance, or combination of events or circumstances, that directly affects, prevents or delays Seller’s ability to perform its obligations under this Agreement and/or EPC Contractor’s ability to perform the Work under the EPC Agreement, if and to the extent that: (i) such event or circumstance is unforeseeable and not within the reasonable control, directly or indirectly, of the affected Party, its Affiliates and Related Persons or the agents and employees of any of them; (ii) the Party affected by such event or circumstance has used reasonably diligent efforts in taking precautions and measures to (a) avoid the effect of such event on such Party and (b) mitigate the consequences thereof; and (iii) such event or circumstance does not result from the affected Party’s or its Affiliates’ and Related Persons’ negligence or fault, or the negligence or fault of any of their Representatives, or the failure of such Party to perform any of its obligations under this Agreement.

A “Force Majeure Event” shall include, provided the foregoing conditions are met, the following: Change in Applicable Law or Permit, excluding new or amended tariffs or changes in the interpretation of tariffs and new or amended Anti-Forced Labor Law or changes in the interpretation thereof; expropriation; invasion; drought, landslide, tornado, hurricane, tsunami, flood, earthquake, and other acts of God; fire; explosion; plague and epidemic (other than COVID-19); invasion, acts of terrorism, war (declared or undeclared) or other armed conflict; riot, revolution, insurrection or similar civil disturbance or commotion; acts of the public enemy; perils of sea; blockade; port closure; sabotage or vandalism; strikes and other labor disputes (including collective bargaining disputes and lockouts) except as excluded below in this definition; industrywide shortages due to a Force Majeure Event of required materials, equipment, or labor; transportation accidents; delays in transportation due to closure of roads or other transportation route by Governmental Authorities or otherwise due to a Force Majeure Event; quarantines,

embargoes, acts of expropriation; and other acts or omissions of a Governmental Authority (other than such acts or omissions in response to acts or omissions of the affected Party, its Affiliates, Subcontractors or Related Persons or the employees and agents of any of them).

Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a “Force Majeure Event”: (i) strikes and other labor disputes (including collective bargaining disputes and lockouts) directed exclusively at Seller, its Affiliates or Related Persons or involving Seller, its Affiliates or Related Persons, unless the strike is part of a more widespread or general strike extending beyond such Party, Affiliate or Related Person, (ii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iii) events that affect the cost of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (v) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Governmental Authorities or otherwise due to an independent, identifiable Force Majeure Event causing such condition; (vi) actions of a Governmental Authority in respect of or in relation to or resulting from a Party’s non-compliance with applicable Laws, unless resulting from the other Party’s negligence or intentional misconduct or breach of its obligations hereunder; (vii) new or amended tariffs or changes in the interpretation of tariffs , (viii) any action (including a withhold release order) taken under an Anti-Forced Labor Law, whether existing as of the Effective Date or imposed or applied after the Effective Date; or (ix) COVID-19 or any actions taken as a result thereof.

“Forced Labor” means all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered him or herself voluntarily, such as any form of forced labor, child labor, indentured labor, bonded labor (including debt bondage, trafficked or slave), prison labor or trafficking in persons.

“Fundamental Purchaser Representations” means the representations and warranties set forth in Section 4.1 (Existence), Section 4.2 (Authority), Section 4.3 (Binding Agreement), and Section 4.7 (Brokers).

“Fundamental Seller Representations” means the representations and warranties set forth in Section 3.1 (Existence), Section 3.2 (Authority), Section 3.3 (Binding Agreement), Section 3.8 (Title to Project Assets), and Section 3.17 (Brokers).

“GAAP” means generally accepted accounting principles in the United States of America applied on a consistent basis.

“Governmental Authority” means any federal or state entity, authority, agency, court, tribunal, department, board, commission, or other body or political subdivision thereof, including any municipality, township, and county, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“Guaranteed Substantial Completion Date” means [Date].

“Hazardous Materials” means: (a) any substance, emission, or material defined as or listed in any Environmental Law as a “regulated substance,” “hazardous substance,” “toxic substance,” “pesticide,” “hazardous waste,” “hazardous material,” “waste,” “pollutant,” “contaminant,” or words of similar import in any Environmental Law; or (b) any products or substances containing petroleum, friable asbestos, polychlorinated biphenyls, or radioactive materials.

“Indebtedness” means any of the following: (a) any indebtedness for borrowed money, whether secured or unsecured; (b) any obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) any obligations as lessee under capitalized leases; (d) any obligations, contingent or otherwise, under acceptances, letters of credit, or similar facilities; (e) any obligations created or arising under conditional sale or title retention agreements; (f) any net obligations payable under any rate, currency, commodity, or other swap, option, or derivative agreement; (g) any obligations secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (other than Permitted Liens); (h) any obligations to pay the deferred purchase price of property or services, except trade accounts payable, accrued compensation, or similar obligations arising in the ordinary course of business, consistent with past practice; and (i) any guaranty of any of the foregoing.

“Indemnification Claim” has the meaning set forth in Section 8.3.1.

“Indemnified Party” has the meaning set forth in Section 8.3.1.

“Indemnifying Party” has the meaning set forth in Section 8.3.1.

“Indemnity Exception” has the meaning set forth in Section 5.8.3.

“Indemnity Reduction Amounts” has the meaning set forth in Section 8.7.2.

“Initial Title Objections” has the meaning set forth in Section 5.4.1(b).

“Intellectual Property” means any United States or foreign: (a) patents and industrial designs (including any continuations, continuations-in-part, renewals, reissues, and applications for any of the foregoing); (b) copyrights (including any registrations and applications for any of the foregoing); (c) trademarks, service marks, trade names, logos, slogans, trade dress, and applications for registration of the foregoing; and (d) trade secrets and confidential information, including confidential know-how, processes, formulae, algorithms, models, or methodologies.

“Interconnection Agreement” means [describe Interconnection Agreement].

“Laborer(s) or Mechanic(s)” means laborer or mechanic as such terms are used in Sections 45(b)(7) and (8) and 48(a)(10) and the PWA Guidance.

“Law(s)” means any applicable statute, law, treaty, rule, code, common law, ordinance, regulation, certificate, Order, decision, decree, writ, or like action of any Governmental Authority or arbitrator, including each Environmental Law.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to be a major U.S.

commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having consolidated net worth of at least \$10 billion USD and a Credit Rating of at least A3 from Moody's or A- from S&P or Fitch; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall be within ten (10) Business Days of expiration or termination, or shall fail or cease to be in full force and effect at any time during the Term, in any such case without replacement; (v) the issuer of such Letter of Credit shall become Bankrupt; or (vi) a merger occurs with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned in accordance with the terms of this Agreement.

“Liability” means any Indebtedness and other obligations of a Person (whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due).

“Liability Cap” has the meaning set forth in Section 12.3.

“Licensed Professional Engineer” has the meaning given to such term in the EPC Agreement.

“Lien(s)” means any mortgage, pledge, deed of trust, hypothecation, assignment, deposit arrangement, charge, security interest, encumbrance, lien (statutory or other), or other security agreement of any kind or nature whatsoever, any conditional sale or other title retention agreement, or any financing lease having substantially the same effect as any of the foregoing.

“Loss(es)” means any judgment, amount paid in settlement, damage, fine, penalty, deficiency, Liability, loss, or expense (including interest, court costs, reasonable fees and expenses of attorneys, accountants, and other experts, or other reasonable expenses of litigation or other proceedings).

“Lost Work Day(s)” means any day or any continuous four (4) hour portion thereof that Seller cannot perform its obligations under this Agreement and/or EPC Contractor cannot perform Work at the Project Site due to a Force Majeure Event or a Purchaser Caused Delay Event.

“LTSA” means the Long-Term Service Agreement in the form of Exhibit M.

“Major Equipment” means the equipment listed on Schedule 1.1(g).

“Material Notification” means any notification with respect to (i) any matter under Article VII, (ii) any matter under Article XI or with respect to any dispute hereunder, (iii) the exercise of legal rights hereunder including any claim for relief resulting from a Force Majeure Event, Purchaser Caused Delay or Scope Change under EPC Agreement under Section 5.15, or (iv) with respect to any Claim or Action related hereto, including any Claim Notice under Article VIII.

“Mechanical Completion” has the meaning given such term in the EPC Agreement.

“Milestone” has the meaning given to such term in the EPC Agreement.

“Milestone Payments” has the meaning set forth in Section 2.2.2(a).

“Minimum Equipment Warranty Requirements” has the meaning given to such term in the EPC Agreement.

“Non-Reimbursable Damages” has the meaning set forth in Section 12.2.

“Objectionable Title Matters” means any matters shown on the Title Commitment or the ALTA Survey (other than Permitted Liens) that Purchaser has identified as requiring cure.

“Operator” has the meaning set forth in the EPC Agreement.

“OPUC” means the Oregon Public Utility Commission.

“Order” means any binding order, writ, judgment, injunction, decree, stipulation, determination, or award of any Governmental Authority.

“Organizational Documents” means with respect to any Person, the certificate or articles of incorporation, organization, or formation and by-laws, the limited partnership agreement, the partnership agreement, the limited liability company operating agreement, or the trust agreement, or such other organizational documents of such Person.

“Outside Closing Date” means [DATE].

“Outside Effective Date” means [DATE].

“Outside Firm Date” means [DATE].

“Outstanding Title Exception(s)” has the meaning set forth in Section 5.4.3.

“Overlap Period” means any taxable period beginning on or before and ending after the Closing Date.

“Overlap Period Taxes” means any Taxes (other than Seller Income Taxes) imposed on or with respect to the Project Assets or Seller for an Overlap Period.

“Party” and “Parties” have the meanings set forth in the Preamble of this Agreement.

“Payment Schedule” means the Payment Schedule attached hereto as Exhibit N.

“Permits” means registrations, permits, licenses, authorizations, consents, approvals, grants, franchises, variances, certificates of authority, letter rulings, or similar rights and privileges granted by or obtained from any Governmental Authority.

“Permitted Exceptions” has the meaning set forth in Section 5.4.4.

“Permitted Liens” means: (a) those Liens set forth in Schedule 1.1(e); (b) any Lien that, individually or in the aggregate, does not interfere in any material respect with the Seller’s ability to locate, interconnect, erect, construct, operate, and maintain, on the Project Site, the Project; (c) zoning, entitlement, conservation restriction, and other land use and environmental regulations by any Governmental Authority; (d) Liens for Taxes and other governmental charges and assessments which are not yet due and payable or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been made; (e) mechanics’, carriers’, workers’, repairers’, and other similar Liens arising or incurred in the ordinary course of business which are not yet due and payable; (f) Liens expressly granted under, or created by, existing, or pursuant to, the terms and conditions of the Project Contracts; (g) Liens created pursuant to, or as a result of the existence of, this Agreement or any Ancillary Agreement; (h) any Liens approved or consented to in writing by Purchaser; (i) Liens relating to any Excluded Asset or Excluded Liability; (j) any Lien that is (or will be) released on or prior to Closing; (k) non-exclusive third-party Easement rights, which are otherwise consistent with clause (b) of this definition above; (l) third party subsurface estate ownership (including unpatented claims and reservations or exceptions in patents or in authorizing Law) and related third party lease or Easement rights; (m) Liens insured over by the Title Company in the Title Policy by affirmative insurance or endorsements in form and substance reasonably acceptable to Purchaser; (n) as of any date prior to the Closing Date, any Lien identified in the Title Commitment or Updated Title Commitment delivered to Purchaser, (o) a Lien that is subordinate to any Project Real Property Agreements; (p) Liens created as a result of Purchaser’s failure to pay amounts that are due and payable under this Agreement or any Ancillary Agreement excluding any amounts which are the subject of a good faith dispute while such dispute is pending, provided Seller remains responsible for (and Permitted Liens specifically excludes) liens for amounts in excess of the Purchase Price due and payable from time to time in accordance with this Agreement, and (q) any Permitted Exception.

“Permitted Update Matter(s)” means, unless notice to or the consent of Purchaser is otherwise required under this Agreement: (a) any new or updated Project Real Property Agreements with the existing parties that are substantially and in all material respects “in the form of” the applicable Project Real Property Agreements existing and scheduled as of the Execution Date; (b) any Contract, matter, or other item that constitutes an Excluded Liability; or (c) any instruments, Contracts, and documents entered into in accordance with Section 5.4.

“Person(s)” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority, or any other form of entity.

“Placed In Service” means “placed in service” for purposes of Sections 45 or 168 of the Code.

“Planned Project Size” means [Project Size] or such other amount as the Parties may mutually agree in writing in their sole discretion.

“Point of Interconnection” has the meaning set forth in the Transmission Service Agreement.

“Post-Closing Tax Period” means any taxable period ending after the Closing Date, or with respect to any Overlap Period, the portion of such Overlap Period that begins the day after the Closing Date.

“Post-Closing Taxes” means any Taxes, other than Purchaser Taxes, imposed on or with respect to the Project or the Project Assets attributable to any Post-Closing Tax Period.

“Pre-Closing Books and Records” has the meaning set forth in Section 2.6.2(a).

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date, or with respect to any Overlap Period, the portion of such Overlap Period ending on the Closing Date.

“Pre-Closing Taxes” means any Taxes, other than Seller Income Taxes, imposed on or with respect to the Project, the Project Assets, or Seller attributable to any Pre-Closing Tax Period.

“Prevailing Wage and Apprenticeship Requirements” means the requirements under Code Sections 48(a)(10) and (11) and, to the extent relevant, Code Sections 45(b)(7) and (8) and any PWA Guidance.

“Project” means the [description of the project] project consisting of the Project Assets and located on the Project Site.

“Project Assets” means all assets, properties, rights, and interests of every kind, nature, character, and description (whether real, personal, or mixed, whether tangible or intangible, and whether at or deliverable to the Project Site), owned or leased by, or licensed to, Seller and its Affiliates as of the Closing Date, in each case, which relate to or are used or held for use in connection with the development, construction, operation, maintenance, repair, ownership, or use of the Project (other than the Excluded Assets), including:

- (a) the Books and Records;
- (b) the Firm Transmission Agreements;
- (c) the Project Contracts;
- (d) the Project Real Property Agreements;
- (e) the Project Equipment;
- (f) the Project Improvements;
- (g) the Project Intellectual Property;
- (h) the Project Permits (other than the Purchaser Permits);
- (i) the Reports;
- (j) the Interconnection Agreement (but only if Seller is a party thereto); and
- (k) the Transmission Service Agreement.

“Project Contracts” means all Contracts to which Seller or its Affiliates (if any) is a party with respect to the Project or the Project Assets, including the Firm Transmission Agreements, the EPC Agreement, but excluding (a) any Contracts solely constituting Excluded Liabilities or Excluded Assets and (b) the Project Real Property Agreements, all of which are listed on Schedule 1.1(f).

“Project Equipment” means all equipment and other tangible personal property related to, used or held for use by Seller for or in connection with the development, construction, operation, maintenance, repair, ownership, or use of the Project, including the Spare Parts and all other equipment and property up to the high voltage dead-end structure in the Project substation, but excluding the Excluded Assets, in each case, whether located at or a deliverable to the Project Site, all of which are listed on Schedule 1.1(g).

“Project Facilities” means the Project Equipment and the Project Improvements comprising the Project.

“Project Improvements” means all buildings, structures, fixtures, access roads, and other improvements located at or on the Project Site that will comprise the Project, and Project Assets (including the operation and maintenance building and other improvements made pursuant to this Agreement, all of which are listed on Schedule 1.1(h)).

“Project Intellectual Property” shall have the meaning set forth in Section 3.18.

“Project Permits” means all Permits required by applicable Law and Prudent Operating Practices for the development, design, engineering, supply, construction, installation, testing, commissioning, operation, maintenance, repair, ownership, and use of the Project at the Project Site, all of which are listed on Part A of Schedule 1.1(b).

“Project Personal Property” has the meaning set forth in Section 3.8.

“Project Real Property Agreements” means all Contracts, instruments, leasehold or sub-leasehold, Easements, and any other interest in real property, including any Contracts for real property rights granted by the State of Oregon or any other Governmental Authority (including any option to acquire the same), and all amendments, assignments, and modifications thereto, and all schedules and exhibits attached thereto, entered into with landowners and which comprise the Project Site, to which Seller or its Affiliates (if any) is a party or by which Seller or its Affiliates (if any) or any of the Project Assets are bound, and that grant, convey, assign, or otherwise affect real property interests relating to the Project Site, all of which are listed on Schedule 1.1(i).

“Project Schedule” has the meaning given to such term in the EPC Agreement.

“Project Site” means the real property upon which the Project will be located, as further described on Schedule 1.1(j).

“Project Site Plan” means the site layout for the Project, including the intended location of each of the Project Facilities as depicted in Exhibit A, Attachment 1 to the EPC Agreement.

“Prudent Operating Practices” means, with respect to the Project during a particular period, (a) the practices, methods, and acts engaged in or approved by a significant portion of developers, owners, and operators involved in utility scale [solar/wind generation] [energy storage] projects in the United States of similar scope, nature, and technology as the Project during such period, or (b) any practices, methods, and acts, which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, would be expected by a significant portion of developers, owners, and operators involved in utility scale [solar/wind generation] [energy storage]

projects in the United States of similar scope, nature, and technology, to accomplish the desired result in a manner consistent with applicable Law, reliability, safety, environmental protection, economy, and expedition, the Project Contracts and any other Contracts affecting the development, permitting, construction, ownership, use, operation, and maintenance of the Project. “Prudent Operating Practices” does not mean the best practice, method, technique, or standard of care, skill, safety, and/or diligence in all cases and is not intended to be limited to optimum practices, methods, techniques, or standards, to the exclusion of others, but is instead intended to encompass a range or spectrum of reasonable and prudent practices, methods, techniques, and standards, employed by such developers, owners, and operators, in the development, ownership, or operation of facilities similar to the Project.

“Punch List” has the meaning given to such term in the EPC Agreement.

“Punch List Holdback Amount” has the meaning given to such term in the EPC Agreement.

“Punch List Item(s)” means the items listed on the Punch List.

“Purchase Price” has the meaning set forth in Section 2.2.1.

“Purchaser” has the meaning set forth in the Preamble of this Agreement.

“Purchaser Caused Delay” means a delay in Seller’s performance of its obligations under this Agreement and/or the EPC Contractor’s performance of its obligations under the EPC Agreement and Seller’s and/or the EPC Contractor’s ability to achieve Project Substantial Completion by the Guaranteed Substantial Completion Date because of a Purchaser Caused Delay Event.

“Purchaser Caused Delay Event” means any event or circumstance, or combination of events or circumstances, that directly affects, prevents or delays Seller’s ability to perform its obligations under this Agreement and/or EPC Contractor’s ability to perform the Work, if and to the extent that such event or circumstance is caused by (i) Purchaser’s (and its permitted representatives’) failure to comply with the Purchaser Access and Communications Protocol attached as Exhibit [XX] to the EPC Agreement, (ii) Purchaser’s failure to perform its obligations hereunder, including payment of the Purchase Price to Seller, or (iii) Purchaser’s failure to comply with its responsibilities under the Transmission Service Agreement, to the extent Purchaser is a Party, or Interconnection Agreement (and in the case of the Interconnection Agreement, following (A) Seller’s assignment of the Interconnection Agreement or rights thereunder to Purchaser or (B) Purchaser otherwise becoming a Party to the Interconnection Agreement). Purchaser Caused Delay shall not include any delay caused by acts or omissions of the Licensed Professional Engineer, unless such acts or omissions are directly caused by a Purchaser Caused Delay.

“Purchaser Default Termination Payment” has the meaning set forth in Section 7.2.3(b).

“Purchaser Firm Date Certificate” has the meaning set forth in Section 6.6.

“Purchaser Indemnified Party” has the meaning set forth in Section 8.1.

“Purchaser Material Adverse Effect” means a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or any Ancillary Agreement to which it is a party or to complete the transactions contemplated hereby or thereby.

“Purchaser Non-Fault Event” means, in the case of termination of this Agreement pursuant to Section 7.1.6 (Firm Date) or Section 7.1.7 (Closing Date), if such termination is solely the result of the failure to satisfy the Firm Date Condition in Section 6.3.2 (Certain Consents) and the Closing Date Condition in Section 6.1.4 (Required Approvals), as applicable, and such failure is not the result of Purchaser’s failure to fulfill in any material respect any obligation, agreement, or covenant under this Agreement required to be fulfilled by Purchaser on or prior to the Closing Date or Firm Date, as applicable.

“Purchaser Permits” means the Project Permits required by applicable Law and Prudent Operating Practices to be obtained by Purchaser in connection with the development, design, engineering, supply, construction, installation, testing, commissioning, operation, maintenance, repair, ownership, and use of the Project at the Project Site (except for any Permits required as a result of the specific legal, regulatory, or financial status of Purchaser or its Affiliates, or as a result of any other facts or circumstances that specifically relate to the business or activities in which Purchaser or its Affiliates are or proposed to be engaged), all of which are listed on Part C of Schedule 1.1(b).

“Purchaser Taxes” means any Taxes imposed on or attributable to Purchaser or Affiliate of Purchaser (other than Pre-Closing Taxes) whether arising prior to, on or after the Closing Date.

“Purchaser’s Consents” has the meaning set forth in Section 4.4.2.

“Purchaser’s Disclosure Schedule” means the Schedules prepared by Purchaser and delivered to Seller in conjunction with the execution of this Agreement.

“Purchaser’s Knowledge” means the actual knowledge of the Persons listed on Schedule 1.1(k), after reasonable review of files and other information in such Person’s possession and after reasonable inquiry of employees of Purchaser or its applicable Affiliates who have primary responsibilities pertinent to such inquiry.

“PWA Guidance” means IRS Notice 2022-61 (November 29, 2022) and any additional guidance issued by the U.S. Department of the Treasury (including any guidance issued by the Internal Revenue Service) pursuant to Sections 45(b)(7), 45(b)(8), 48(a)(10), and 48(a)(11) of the Code, or any provision of the Code that is cross-referenced therein.

“PWA Requirements Certificate” is defined in Section 9.2.7.

“Registered Apprenticeship Program” has the meaning given to such term in Section 3131(e)(3)(B) of the Code and any PWA Guidance.

“Related Person(s)” means with respect to each Party, its Affiliates, and the employees, officers, and directors of such Party and its Affiliates.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, seeping, or disposing to the environment (including the abandonment or discarding of barrels, containers, and receptacles containing Hazardous Materials).

“Remedial Action Plan” has the meaning set forth in Section 5.5.5.

“Remediation” means actions required under Environmental Laws or by a Governmental Authority, or a claim by a third party against a Purchaser Indemnified Party, in each case to address an Environmental Condition, including any monitoring, investigation, assessment, characterization, treatment, cleanup, containment, removal, mitigation, response, or restoration work.

“Repair or Alteration” means alteration or repair work as such terms are used in Code Sections 45(b)(7) and (8) and 48(a)(10) and any PWA Guidance.

“Reports” means (a) all final, or if no final version exists then the last available version of, material third party reports, studies, analyses, and tests (and all amendments and supplements thereto) prepared for, or commissioned by, and delivered to, Seller or any of its Affiliates that relate to the Project, including the Project Assets, or the Project Site, including Phase I environmental assessments, environmental impact studies, geotechnical studies, transportation studies, cultural resources studies, transmission or interconnection studies, including interconnection system impact studies, wildlife studies, studies or analysis of or reports on the environmental condition of the Project Site or compliance by the Project or the Project Site with Environmental Laws, Federal Aviation Administration analyses, state department of transportation analyses, zoning studies, visual impact studies, and wetlands studies, and (b) all Reports delivered to Purchaser pursuant to Section 5.10, including Additional Reports.

“Representatives” means, as to any Person, its officers, directors, employees, agents, partners, members, stockholders, counsel, accountants, investment bankers, engineers, consultants, and other representatives or advisors; provided that in no event shall Seller or any Affiliate of Seller be a Representative of Purchaser for purposes of this Agreement.

“Required Approvals” means the Consents set forth on Schedule 1.1(l).

“Retained Information” has the meaning set forth in Section 2.6.2(b).

“ROFO Negotiation Period” has the meaning set forth in Section 7.1.11(b).

“ROFO Notice” has the meaning set forth in Section 7.1.11(b).

“ROFO Offer” has the meaning set forth in Section 7.1.11(b).

“ROFO Period” has the meaning set forth in Section 7.1.11(b).

“Schedule” or “Schedules” means one or more of the disclosure schedules attached hereto.

“Scope Change” has the meaning given to such term (or any similar term) in the EPC Agreement.

“Scope Change Order” has the meaning given to such term (or any similar term) in the EPC Agreement.

“Seller” has the meaning set forth in the Preamble to this Agreement.

“Seller Default Termination Payment” has the meaning set forth in Section 7.2.3(a).

“Seller Firm Date Certificate” has the meaning set forth in Section 6.7.

“Seller Income Taxes” means any franchise or similar Taxes imposed on, or measured by reference to, the net income or net worth of, Seller or any Affiliate of Seller.

“Seller Indemnified Party” has the meaning set forth in Section 8.2.

“Seller Material Adverse Effect” means any change or changes that, individually or in the aggregate, has, or would reasonably be expected to have, a material adverse effect on: (a) the business, assets, operations, property, or condition of Seller ; (b) the business, assets, operations, construction, ownership, value, use, or condition of the Project or the Project Assets; or (c) the ability of Seller to perform its obligations under this Agreement or the Ancillary Agreements to which Seller is a party or to complete the transactions contemplated hereby; provided, however, that, except to the extent caused by Seller or its Affiliates, none of the following will constitute or be deemed to contribute to a Seller Material Adverse Effect, or will otherwise be taken into account in determining whether a Seller Material Adverse Effect has occurred or would reasonably be expected to occur: (i) changes generally affecting the electric industry in which the Project operates (including the electric generating, transmission, or distribution industries), whether international, national, regional, state, or local; (ii) changes in international, national, regional, state, or local wholesale or retail markets for electric power, including those due to actions by competitors and regulators; (iii) changes in general regulatory or political conditions, including any acts of war or terrorist activities; (iv) changes in international, national, regional, state, or local electric transmission or distribution systems generally; (v) changes in the markets for or costs of commodities or supplies, including fuel, generally; (vi) changes in the markets for or costs of electricity, generally; (vii) changes in tariffs, Law or regulatory policy or the interpretation or enforcement thereof; (viii) changes or adverse conditions in the financial, banking, or securities markets, in each case, including any disruption thereof and any decline in the price of any security or any market index; (ix) changes in accounting requirements or principles; (x) labor strikes, requests for representation, organizing campaigns, work stoppages, slowdowns, or other labor disputes; (xi) new generating facilities and their effect on pricing or transmission; (xi) the announcement, negotiation, pendency, execution, or delivery of this Agreement or the consummation of the transactions contemplated hereby, including the identity of, or the effect of any fact or circumstance relating to, Purchaser or any of its Affiliates or any communication by Purchaser or any of its Affiliates regarding plans, proposals, or projections with respect to the Project or Project Assets (including any impact on the relationship of the Project, contractual or otherwise, with customers, suppliers, distributors, vendors, lenders, employees, or partners); (xiii) actions or omissions expressly required to be taken or not taken by Seller in accordance with

this Agreement or the Ancillary Agreements or requested, or consented to, by Purchaser or any of its Affiliates; (xiv) any breach, violation or non-performance of any provision of this Agreement by Purchaser or any of its Affiliates (subject to applicable notice and cure rights); (xv) changes in or effects on the Project Assets which are cured (including the payment of money) by Seller or its Affiliates; (xvi) failure by Seller to meet any projections or forecasts for any period occurring on or after the date hereof; or (xvii) any change, event, occurrence, or development covered hereunder as an Excluded Liability; provided, further, that the matters referred to in clauses (i) and (iii) above may constitute or be deemed to contribute to a Seller Material Adverse Effect, and may otherwise be taken into account in determining whether a Seller Material Adverse Effect has occurred to the extent such matter has a materially disproportionate adverse effect on the Project or the Project Assets as compared with other similarly situated projects located in the State of Oregon.

“Seller Non-Fault Event” means, in the case of termination of this Agreement pursuant to Section 7.1.6 (Firm Date) or Section 7.1.7 (Closing Date), if such termination is solely the result of the failure to satisfy the Firm Date Condition in Section 6.3.2 (Certain Consents), or the Closing Date Condition in Section 6.2.4 (Required Approvals), as applicable, and such failure is not the result of Seller’s failure to fulfill in any material respect any obligation, agreement, or covenant under this Agreement required to be fulfilled by Seller on or prior to the Closing Date or Firm Date, as applicable.

“Seller’s Letter of Credit” means one or more irrevocable, standby letters of credit (in substantially and in all material respects the same form and substance as set forth in Exhibit A-1 or as otherwise reasonably acceptable to Purchaser) in the amount of [Amount] Dollars ([XXX]). issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from the statistical rating business of S&P or Fitch or A3 from Moody’s, and a consolidated net worth of at least Ten Billion Dollars (\$10,000,000,000). The costs of a Seller’s Letter of Credit shall be borne by Seller.

“Seller’s Consents” has the meaning set forth in Section 3.4.2.

“Seller’s Disclosure Schedule” means the Schedules prepared by Seller and delivered to Purchaser in conjunction with the execution of this Agreement.

“Seller’s Knowledge” means the actual knowledge of the Persons listed on Schedule 1.1(o) after reasonable review of files and other information in such Person’s possession or control and after reasonable inquiry of employees of Seller or its applicable Affiliates who have primary responsibilities pertinent to such inquiry.

“Settlement” has the meaning set forth in Section 8.3.2.

“Settlement Agreement” has the meaning set forth in Section 11.1.

“Spare Parts” means the recommended spare parts identified in the EPC Agreement.

“Subcontractor” has the meaning given to such term in the EPC Agreement.

“Subcontract” has the meaning given to such term in the EPC Agreement.

“Substantial Completion” has the meaning given such term in the EPC Agreement.

“Surveyor” means [Surveyor Name].

“Tax” or “Taxes” means any and all taxes, including any interest, penalties, or other additions to tax that may become payable in respect thereof, imposed by any foreign, federal, state, or local government or any agency or political subdivision of any such government, which taxes shall include all income taxes, profits taxes, taxes on gains, alternative minimum taxes, estimated taxes, payroll and employee withholding taxes, unemployment insurance taxes, social security taxes, welfare taxes, disability taxes, severance taxes, license charges, taxes on stock, sales and use taxes, ad valorem taxes, value added taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real or personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers’ compensation taxes, and other taxes, fees, duties, levies, customs, tariffs, imposts, assessments, obligations, and charges of the same or of a similar nature to any of the foregoing.

“Tax Consent” has the meaning set forth in Section 9.2.11.

“Tax Returns” means any return, report, rendition, information return, claim for refund, or other document (including any related or supporting information) supplied to or required to be supplied to any Taxing Authority with respect to Taxes, including any attachments, amendments, and supplements thereto.

“Taxing Authority” means, with respect to any Tax, the Governmental Authority or political subdivision thereof that imposes such Tax and the agency (if any) charged with the collection of such Tax for such entity or subdivision.

“Technical Specifications” means the technical specifications set forth in the EPC Agreement.

“Third Party Claim” has the meaning set forth in Section 8.3.1.

“Title Commitment” means a preliminary title commitment or report of condition of title to be prepared by the Title Company with respect to each parcel of real property comprising the Project Site or that is the subject of a Project Real Property Agreement.

“Title Company” means [Title Company Name].

“Title Objection Letter” has the meaning set forth in Section 5.4.1(b).

“Title Policy” means a title insurance policy issued by the Title Company as of the Closing Date, at Seller’s cost and expense, in the amount of the Purchase Price, which amount will be subject to Title Company underwriting approval, insuring Purchaser’s rights in each parcel of real property comprising the Project Site or that is the subject of a Project Real Property Agreement, including the Project Facilities, that: (a) lists as title exceptions the standard exceptions, Permitted Liens, or Liens covered by affirmative title coverage or title endorsement; and (b) includes the following title endorsements ALTA 17-06 (Access), ALTA 19-06 (Contiguity), ALTA 25-06 (Same as Survey), ALTA 36-06 (Energy Project – Leasehold / Easement), or similar state

approved versions available in the State of Oregon and otherwise in compliance with the requirements of this Agreement.

“Transmission Service Agreement” means [transmission agreement description].

“Update” has the meaning set forth in Section 5.8

“Updated ALTA Survey” has the meaning set forth in Section 5.4.2.

“Updated Title Commitment” has the meaning set forth in Section 5.4.2.

“Work” has the meaning given to such term in the EPC Agreement.

1.2 Rules as to Usage. Except as otherwise expressly provided herein, the following rules apply to the usage of terms in this Agreement:

(a) The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined. If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb).

(b) “Include,” “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import.

(c) “Writing,” “written” and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

(d) Any Law defined or referred to herein means such Law as from time to time amended, modified, or supplemented, including by succession of comparable successor Law and any rules and regulations promulgated thereunder.

(e) References to a Person are also to its permitted successors and assigns, and in the case of any Governmental Authority, to any Person(s) succeeding to its functions and capacities.

(f) “Hereof,” “herein,” “hereunder,” and comparable terms refer, unless otherwise expressly indicated, to this Agreement (including the Exhibits and Schedules of this Agreement) in its entirety and not to any particular article, section, or other subdivision thereof or exhibit or schedule or other attachment thereto. References in an instrument to “Article,” “Section” or another subdivision or to an exhibit, schedule, or other attachment are, unless the context otherwise requires, to an article, section, subsection, or subdivision of or an exhibit or schedule or other attachment to this Agreement.

(g) Pronouns, whenever used in any agreement or instrument that is governed by this Agreement and of whatever gender, shall include all Persons. References to any gender include, unless the context otherwise requires, references to all genders.

(h) When expressing an obligation of a Person, the words “shall” and “will” have equal force and effect.

(i) Whenever the consent or approval of any Party is required pursuant to this Agreement, unless expressly stated that such consent or approval is to be given in the sole discretion of such Party, such consent or approval shall not be unreasonably withheld, conditioned, or delayed; provided, however, such consent or approval shall not be required if and to the extent that the requirement of such consent or approval would violate any applicable Law. It is agreed that, even though the foregoing general rule of construction would obviate the need for such qualification, if a particular consent or approval required pursuant to this Agreement nevertheless contains a qualification to the effect of not to be unreasonably withheld, or conditioned, or delayed (or any or all of the foregoing qualifiers), such qualification in such instance will not affect the application of the foregoing general rule of construction on any instance of a consent or approval in this Agreement not so qualified.

(j) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken, without penalty, on or by the next day that is a Business Day.

(k) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP as applied to the accounting entity to which they refer.

(l) Regarding the determination of any period of time, “from” means “including and after,” “to” means “to but excluding”, and “through” means “through and including”.

(m) Any representation or warranty contained herein as to the enforceability of a Contract (including this Agreement) is subject to the effect of any Bankruptcy, insolvency, reorganization, moratorium, or other similar Law affecting the enforcement of creditors’ rights generally and to general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(n) All monetary figures are of United States dollars unless otherwise specified.

1.3 Schedules and Exhibits. This Agreement consists of the Articles contained herein and the Schedules and Exhibits attached hereto, all of which comprise part of one and the same agreement with equal force and effect.

ARTICLE II PURCHASE AND SALE; PURCHASE PRICE; CLOSING

2.1 Effective Date; Purchase and Sale; Excluded Assets; Excluded Liabilities; Assumed Liabilities.

2.1.1 Effective Date. This Agreement shall be effective on the date (the “Effective Date”) that is the later of: (a) the date that Seller provides written notice to Purchaser

that Seller has obtained all required corporate or limited liability company approvals (including but not limited to approvals of its executive management and Board of Directors) to consummate the transactions contemplated by this Agreement; (b) the date that Purchaser provides written notice to Seller that Purchaser has obtained all required corporate approvals (including but not limited to approvals of its executive management and Board of Directors) to consummate the transactions contemplated by this Agreement. The Parties expect the Effective Date to occur on or before the Outside Effective Date, provided that the Outside Effective Date may be extended upon the mutual agreement of the Parties. In the event that the Parties do not mutually agree to extend the Outside Effective Date and the Effective Date has not occurred, then Section 7.1.10 shall apply.

2.1.2 Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, transfer, convey, assign, and deliver to Purchaser, free and clear of all Liens (other than Permitted Liens), and Purchaser shall purchase, acquire, and pay for, all of Seller's right, title, and interest in and to the Project Assets, but not the Excluded Assets.

2.1.3 Assignment and Assumption of Project Contracts. On the terms and subject to the conditions set forth in this Agreement, simultaneous with the Closing, Seller shall assign to Purchaser, and Purchaser shall accept and assume the following rights and obligations from Seller: (a) all of Seller's rights under the Project Contracts, Project Permits, and Project Real Property Agreements; and (b) all of Seller's obligations arising under the Project Contracts, Project Permits, and Project Real Property Agreements, solely to the extent such obligations arise after the Closing and do not constitute Liabilities (i) arising out of any failure to perform, improper performance, breach, default, or violation by Seller or any of its Affiliates (or any Person acting on behalf of Seller or any of its Affiliates) prior to or after the Closing or (ii) arising or accruing on, prior to, or after the Closing relating to Construction Costs.

2.1.4 Excluded Assets. Seller shall have no obligation to, and does not, transfer any interest or rights in the Excluded Assets, and Purchaser shall have no Liability with respect thereto. The Parties acknowledge and agree that Seller shall have the right on or prior to the Closing Date to retain or to transfer and assign to one or more of its Affiliates its interests in the Excluded Assets without making, giving, or obtaining Consent to or from Purchaser.

2.1.5 Excluded Liabilities; Assumed Liabilities.

(a) Excluded Liabilities. Except for the Assumed Liabilities, Purchaser will not assume and will not be responsible to pay, perform, satisfy, or discharge when due any of the following Liabilities of Seller or any of its Affiliates, whether such Liabilities arise or are asserted before, at, or after the Closing (collectively, the "Excluded Liabilities"), and all such Excluded Liabilities will remain the exclusive responsibility of Seller or its applicable Affiliates:

(i) all Liabilities that have arisen or may arise with respect to: (A) any employee benefit plan, employment agreement, or other arrangement of Seller, any Affiliate of Seller or any of their respective ERISA Affiliates providing any type of compensation to any former or current employee of Seller, any Affiliate of Seller, or any of their respective ERISA Affiliates, including any obligation or Liability for providing continuation coverage under

and complying with Section 4980B of the Code, Sections 601 through 608 of ERISA, and any applicable state Law of similar intent with respect to any individual who either prior to, on or after the Closing Date was covered under any group health plan contributed to or maintained by Seller, any Affiliate of Seller, or any of their respective ERISA Affiliates, or who will otherwise be an “M&A Qualified Beneficiary” (as such phrase is defined in Treasury Regulation Section 54.4980B-9, Q&A-4) in connection with the transactions contemplated by this Agreement; and (B) any current or former employee, independent contractor, or consultant of Seller, any Affiliate of Seller, or any of their respective ERISA Affiliates;

(ii) all Liabilities of Seller and any of its Affiliates relating to, resulting from, or arising out of the Project Contracts or Project Real Property Agreements not expressly assumed by Purchaser pursuant to Section 2.1.3, and all Liabilities relating to, resulting from, or arising out of Contracts relating to the Project, the Project Assets, or the Project Site which are not Project Contracts or Project Real Property Agreements;

(iii) all Liabilities of Seller and any of its Affiliates under the Project Permits (other than Purchaser Permits) not expressly assumed by Purchaser pursuant to Section 2.1.3, and all Liabilities under Permits relating to the Project, the Project Assets, or the Project Site which are not Project Permits;

(iv) all Liabilities arising or accruing on, prior to, or after the Closing relating to Construction Costs;

(v) all Pre-Closing Taxes and Seller Income Taxes with respect to the transfer of the Project Assets pursuant to this Agreement;

(vi) all Liabilities in any way relating to, resulting from, or arising out of any Excluded Assets; and

(vii) any Liability relating to, resulting from, or arising out of any portion of the Project Assets with respect to which Project Substantial Completion has not occurred, unless and until the Final Completion Date occurs with respect thereto.

(b) Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, and without limiting the rights and obligations of the Parties under this Agreement, including under Article V and Article VIII, simultaneous with the Closing, Purchaser shall assume, and Purchaser hereby agrees to pay, satisfy, and discharge when due, any and all of the following Liabilities (other than the Excluded Liabilities) whether arising before, on, or after the Closing Date, of Seller relating to, resulting from, or arising out of the present, past, or future development, construction, ownership, or operation of the Project (collectively, the “Assumed Liabilities”):

(i) all Liabilities under the Project Contracts, Project Real Property Agreements, and Project Permits assumed by Purchaser, pursuant to, and subject to the conditions set forth in, Section 2.1.3;

(ii) other than Liabilities arising or accruing on or prior to the Closing, including Liabilities relating to Construction Costs, all Liabilities arising from the

ownership, operation, maintenance, or use of the Project or the Project Assets by Purchaser following the Closing; and

(iii) any Liabilities for any Taxes with respect to the Project Assets for any taxable year (or portion thereof) beginning after the Closing Date.

2.2 Purchase Price.

2.2.1 Consideration. On the terms and subject to the conditions set forth in this Agreement, the consideration for the purchase by Purchaser and sale by Seller of the Project Assets and the other matters set forth herein will be (a) the assumption of the Assumed Liabilities, and (b) a cash amount equal to [Amount] Dollars ([XXX]), subject to adjustment, if any, as provided in this Agreement for the cost of any Scope Change Order due to (i) a Scope Change Order that is requested and issued by Purchaser, including any changes to the inventory of Spare Parts that Purchaser requests pursuant to the EPC Agreement, and accepted by Seller and the EPC Contractor before or after the Closing Date, (ii) Force Majeure Delay in accordance with Section 5.15.1, or (iii) any Scope Change Order due to a Purchaser Caused Delay in accordance with Section 5.15.2 (the “Purchase Price”).

2.2.2 Method of Payment of Purchase Price. Payment of the Purchase Price shall be made in United States Dollars, by wire transfer of immediately available federal funds to an account located in the United States as Seller may specify by notice. The Purchase Price will be paid as follows:

(a) from and after the Firm Date, Purchaser shall pay Seller in accordance with the Payment Schedule at such Milestones and in such amounts as set forth therein (the “Milestone Payments”); provided that such Milestones have been achieved under the terms of the EPC Agreement;

(b) on the Closing Date, Purchaser shall pay to Seller an amount equal to the Purchase Price, minus the sum of (i) the Punch List Holdback, if any, plus, (ii) the aggregate amount of Milestone Payments previously paid to Seller pursuant to Section 2.2.2(a) (the “Closing Payment”); and

(c) Seller shall provide Purchaser a copy of the Punch List pursuant to and in accordance with the Purchaser Access and Communications Protocol attached as Exhibit [XX] to the EPC Agreement. Following the Closing Date, (i) Seller may submit to Purchaser on a monthly basis an invoice for the portion of the Punch List Holdback allocable to the Punch List Item(s) completed by the EPC Contractor, which shall include a certification by the Licensed Professional Engineer confirming the completion of such Punch List Item(s) and (ii) within thirty (30) Days after receipt of such invoice, Purchaser shall pay Seller, an amount equal to the portion of the Punch List Holdback allocable to such completed Punch List Item(s).

2.2.3 Documentation. Seller shall provide Purchaser with a request for payment after receipt of verification by the Licensed Professional Engineer of achievement of each Milestone in accordance with the Payment Schedule. Purchaser shall pay Seller all Milestone Payments within thirty (30) days after receipt of such Licensed Professional Engineer verified request for payment. Each of the Parties agree to provide to the other Party any receipts,

confirmations, or other appropriate documentation reasonably requested by such Party from time to time in order to evidence the payments made pursuant Section 2.2.2.

2.3 Tax Treatment of Purchase Price. The Parties acknowledge and agree that for purposes of income Tax reporting, the Project Assets do not include any goodwill or going concern value. Purchaser and Seller agree that neither they nor their Affiliates will file an Internal Revenue Service Form 8594 in connection with the sale of the Project Assets, and they and their Affiliates will otherwise report the transaction consistently with the intent of this Section 2.3 for all income Tax reporting purposes.

2.4 The Closing. The closing of the transactions contemplated herein (the “Closing”) will take place at the offices of Purchaser in Portland, Oregon, at 10:00 a.m. Pacific time on the date as soon as practicable (but in no event longer than three (3) Business Days, after the conditions to the Closing set forth in Section 6.1 and Section 6.2 have been satisfied or waived by the applicable Party), or at such other place, time, or date as Purchaser and Seller mutually agree in writing (the “Closing Date”), and shall be effective as of 12:00:01 a.m. Pacific time on the Closing Date. Notwithstanding anything to the contrary in this Agreement, in no event shall the Closing and the associated Closing Date occur after the Outside Closing Date.

2.5 Closing Deliveries.

2.5.1 Purchaser’s Closing Deliveries. On or prior to the Closing, Purchaser shall pay to Seller the Closing Payment in accordance with Section 2.2.2, and shall execute and deliver (as applicable) to Seller the following items:

(a) a counterpart signature page to the Bill of Sale substantially and in all material respects in the form attached as Exhibit B (the “Bill of Sale”), executed by an authorized representative of Purchaser;

(b) a counterpart signature page to one or more (as necessary) of the assignment and assumption agreements substantially and in all material respects in the form attached hereto as Exhibits C-1, C-2, and C-3 with such changes, if any, as may be required by the applicable counterparties thereto solely for Exhibits C-3 (collectively, the “Assignment and Assumption Agreements”), and executed by an authorized representative of Purchaser;

(c) a certificate, dated as of the Closing Date, executed by the Secretary or any Assistant Secretary of Purchaser, certifying that attached thereto is: (i) a true, accurate, and complete copy of a Certificate of Good Standing with respect to Purchaser, issued by the Secretary of State of the State of Oregon as of a recent date; (ii) a true, accurate, and complete copy of the resolutions of the board of directors of Purchaser, authorizing the execution, delivery, and performance by Purchaser of this Agreement and all of the other agreements and instruments, including the Ancillary Agreements, to which it is a party, in each case, to be executed and delivered by Purchaser in connection with this Agreement; and (iii) the name, title, and signature of each of the authorized representatives of Purchaser authorized to execute and deliver this Agreement and the other agreements and instruments contemplated by this Agreement, including the Ancillary Agreements, to which it is a party, substantially and in all material respects in the form attached as Exhibit D-1;

(d) a certificate, dated as of the Closing Date, executed by an authorized officer of Purchaser, certifying as to the matters set forth in Section 6.2.1 and Section 6.2.2; and

(e) copies of the necessary agreements for the required transmission and ancillary services.

2.5.2 Seller's Closing Deliveries. On or prior to the Closing, Seller shall execute and deliver, or shall cause to be executed and delivered (as applicable), to Purchaser the following items:

(a) a counterpart signature page to the Bill of Sale, executed by an authorized representative of Seller;

(b) counterpart signature page(s) to the Assignment and Assumption Agreements, executed by an authorized representative of Seller;

(c) an owner's title affidavit, with respect to the Project Site, executed by an authorized representative of Seller, in form and substance satisfactory to the Title Company;

(d) a certification of non-foreign status, in the form and manner which complies with the requirements of Section 1445(b)(2) of the Code and Treasury Regulation Section 1.1445-2(b)(2) with respect to Seller (or its direct or indirect regarded owner, as applicable);

(e) certificates, dated as of the Closing Date, executed by the Secretary or any Assistant Secretary of Seller, certifying that attached thereto is: (i) a true, correct, and complete copy of a Certificate of Good Standing with respect to Seller, issued by the Secretary of State of the State of [State] as of a recent date; (ii) a true, correct, and complete copy of the company action of Seller, authorizing the execution, delivery, and performance by Seller of this Agreement and all of the other agreements and instruments, including the Ancillary Agreements, to which it is a party, in each case, to be executed and delivered by Seller in connection with this Agreement; and (iii) the name, title, and signature of each of the authorized representatives of Seller authorized to execute and deliver this Agreement and the other agreements and instruments contemplated by this Agreement, including the Ancillary Agreements, to which it is a party, substantially and in all material respects in the forms attached as Exhibit D-2 and Exhibit D-3;

(f) a certificate, dated as of the Closing Date, executed by an authorized officer of Seller, certifying as to the matters set forth in Section 6.1.1 and Section 6.1.2; and

(g) confirmation that the Seller's Letter of Credit remains in full force and effect as required by Section 5.16.

2.6 Further Assurances; Post-Closing Cooperation.

2.6.1 Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, at any Party's request and without further consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment, and confirmation, provide such materials and information,

and take such other actions as such Party may reasonably deem necessary or desirable in order to more effectively: (a) to transfer, convey, and assign to Purchaser, and to confirm Purchaser's title to, the Project Assets; (b) to effectuate the assumption by Purchaser of the Project Contracts, Project Permits (other than Purchaser Permits), Project Intellectual Property, and the Assumed Liabilities; and (c) otherwise to complete the transactions contemplated by this Agreement.

2.6.2 Pre-Closing Books and Records.

(a) Following Closing, each Party and its Affiliates will afford each other Party and their respective Representatives, during normal business hours, reasonable access to certain non-confidential documentation with respect to periods prior to Closing (the "Pre-Closing Books and Records") and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting Party in connection with: (i) the preparation of Tax Returns; (ii) compliance with the requirements of any Governmental Authority; (iii) any Excluded Liabilities or Assumed Liabilities; or (iv) any rights and obligations arising under Article VIII, Article IX, or Article XI. Each Party shall maintain Pre-Closing Books and Records reasonably expected to be required in connection with the matters described in items (i) through (iv) of the preceding sentence in accordance with the ordinary course document retention policies of such Party; provided, however, that nothing in this Agreement shall be deemed to obligate a Party to maintain the Pre-Closing Books and Records for longer than seven (7) years after Closing, and, (x) in the case of Purchaser, to provide access to Pre-Closing Books and Records other than those of Purchaser that are related to the transactions contemplated by this Agreement, and (y) in the case of Seller, to provide access to Pre-Closing Books and Records other than those of Seller; and provided, further, that, in the case of any dispute between the Parties, access to Books and Records shall instead be governed by the applicable Laws of discovery.

(b) Purchaser acknowledges and consents to the retention by Seller of information, including Books and Records, Seller has made available to Purchaser relating to the Project Assets (the "Retained Information"). From and after the Closing Date for a period of two (2) years, Seller shall, and shall cause its Representatives to, treat the Retained Information relating solely to the Project Assets as strictly confidential (except to extent: (i) the Retained Information is or was generally available to the public; (ii) the Retained Information is or was available to Seller or its Representatives on a non-confidential basis from other sources not actually known by Seller to be under a duty of confidentiality to Purchaser; or (iii) compelled to disclose by judicial or administrative process or by other requirements of applicable Law, any stock exchange, or any other self-regulatory organization or as reasonably required by Seller in connection with the matters described in clauses (i) through (iv) of Section 2.6.2(a)).

2.6.3 Delivery of Books and Records. No later than the Closing Date (or in the case of Books and Records not immediately required for the ownership, use, operation, and maintenance of the Project that cannot be reasonably and practicably delivered at the Closing, as soon as reasonably practicable thereafter, but no later than thirty (30) days after the Closing Date), Seller shall deliver all Books and Records to Purchaser at Purchaser's offices in Portland, Oregon.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in Seller's Disclosure Schedule (as the same may be updated pursuant to Section 5.8), and subject to the disclaimers, acknowledgements, and agreements contained in Section 10.2 and Section 13.16, Seller represents and warrants to Purchaser as of the Effective Date, the Firm Date, and the Closing Date (except for those representations and warranties made as of a specified date, which shall be true and correct as of that date) as follows:

3.1 Existence. Seller is duly formed, validly existing, and in good standing, as applicable, under the Laws of the jurisdiction of its formation. Seller has the requisite [entity type] power and authority to own, operate, and lease its properties and assets and to carry on its business as now being conducted. Seller is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of the business transacted by it makes qualification necessary, except where the failure to be so qualified, licensed, or in good standing would not reasonably be expected to have a Seller Material Adverse Effect.

3.2 Authority. Seller has all requisite [type of entity] power and authority to execute and deliver this Agreement, the EPC Agreement, and the Ancillary Agreements to which it is (or will be) a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder and to complete the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement, the EPC Agreement, and the Ancillary Agreements to which it is (or will be) a party in connection with the transactions contemplated hereby, and the performance by Seller of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary [entity type] action.

3.3 Binding Agreement. This Agreement, the EPC Agreement, and the Ancillary Agreements to which Seller is (or will be) a party have been (or will be when delivered) duly and validly executed and delivered by Seller and, assuming due and valid authorization, execution and delivery thereof by Purchaser and each other party thereto, this Agreement, the EPC Agreement, and the Ancillary Agreements to which it is (or will be) a party are (or will be when delivered) valid and binding obligations of Seller enforceable against Seller in accordance with their terms.

3.4 No Conflicts. The execution and delivery by Seller of this Agreement, the EPC Agreement, and the Ancillary Agreements to which it is (or will be) a party does not, and the performance by Seller of its obligations under this Agreement, the EPC Agreement, and the Ancillary Agreements to which it is (or will be) a party and the consummation of the transactions contemplated hereby and thereby, will not:

3.4.1 conflict with or result in a violation or breach of any of the terms, conditions, or provisions of Seller's Organizational Documents;

3.4.2 assuming all of the consents and approvals set forth in Schedule 3.4.2 (the "Seller's Consents") have been obtained or given, result in a default (or give rise to any right of termination, cancellation, or acceleration) under any of the terms, conditions, or provisions of any Project Contract, Project Permit, or Project Real Property Agreement (with or without notice or

lapse of time or both), except for such defaults (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been obtained in writing (true, correct, and complete copies of which have been furnished to Purchaser);

3.4.3 assuming (a) all of the Seller's Consents have been obtained or given and (b) receipt of any Required Approvals, conflict with or result in a violation or breach of any term or provision of any Law applicable to Seller, the Project, the Project Site, or the Project Assets; or

3.4.4 assuming all of the Seller's Consents have been obtained or given, result in the imposition or creation of any Lien (other than a Permitted Lien or a Permitted Exception) upon any of the Project Assets, other than in favor of Purchaser.

3.5 Governmental Approvals and Filings. Except (a) as set forth in Schedule 3.5, (b) for any Seller's Consents, (c) for receipt of any Required Approvals, or (d) for ministerial consents, approvals, filings, or notices of a type that are routinely granted on application, no consent or approval of, filing with, or notice to any Governmental Authority by Seller is required in connection with the execution, delivery, and performance by Seller of this Agreement, the EPC Agreement, or any of the Ancillary Agreements to which it is (or will be) a party or the consummation of the transactions contemplated hereby or thereby.

3.6 Legal Proceedings. Except as set forth on Schedule 3.6, there are no Actions or Claims (a) outstanding or pending to which Seller or any of its Affiliates is a party or, (b) to Seller's Knowledge, threatened in writing against Seller or any of its Affiliates or any of its or their assets and properties, including the Project Assets, or the Project, in each case, which seek or would reasonably be expected to result in (i) the issuance of an Order restraining, enjoining, or otherwise prohibiting or making illegal the completion of the transactions contemplated by this Agreement or any of the Ancillary Agreements or, (ii) individually or in the aggregate, a Seller Material Adverse Effect.

3.7 Compliance with Laws. Seller is not in violation of or in default under any Law (excluding any Environmental Laws, which are exclusively addressed in Section 3.15, and Tax Laws, which are exclusively addressed in Section 3.22) applicable to it, the Project, the Project Site, or the Project Assets, in each case, in any material respect. Except as set forth on Schedule 3.7, Seller has not received written notification from any Governmental Authority alleging that it is in violation of any Law (excluding any Environmental Laws, which are exclusively addressed in Section 3.15, and Tax Laws, which are exclusively addressed in Section 3.22) applicable to it, the Project, the Project Site, or the Project Assets.

3.8 Title to Project Assets. As of the Closing Date, Seller has good and marketable title to the Project Assets constituting personal property (as opposed to real property) (the "Project Personal Property"), free and clear of all Liens, except for Permitted Liens.

3.9 Real Property.

3.9.1 As of the Firm Date, Seller holds good and valid leasehold and Easement interests and options in the Project Site pursuant to the Project Real Property Agreements. As of the Closing Date, the Project Real Property Agreements constitute all of the real property rights necessary for the development, construction, commissioning, ownership, operation, use, or

maintenance of the Project in accordance with Prudent Operating Practices and applicable Law at the Project Site.

3.9.2 As of the Firm Date and the Closing Date, with respect to Seller or any Affiliate of Seller and, to Seller's Knowledge, each other party thereto, each Project Real Property Agreement is legal, valid, binding, and in full force and effect.

3.9.3 As of the Firm Date and the Closing Date, except as set forth in Schedule 3.9.3, (a) neither Seller nor any Affiliate of Seller is in breach or default in any material respect under any Project Real Property Agreement and, to Seller's Knowledge, no other party to a Project Real Property Agreement is in breach or default in any material respect thereunder, (b) no event has occurred which, with notice, lapse of time, or both, would constitute a breach or default by Seller or any Affiliate of Seller or, to Seller's Knowledge, any other party to a Project Real Property Agreement, or, to Seller's Knowledge, would permit termination, modification, or acceleration, thereof, and (c) neither Seller nor any Affiliate of Seller has received or delivered any written notice of breach or default or termination with respect to any Project Real Property Agreement.

3.9.4 Seller has all requisite [entity type] power and authority to execute and deliver the Project Real Property Agreements, to perform its obligations thereunder and to complete the transactions contemplated thereby. The execution and delivery by Seller of the Project Real Property Agreements, and the performance by Seller of its obligations thereunder, have been duly and validly authorized by all necessary [entity type] action.

3.9.5 There are no commitments or agreements between Seller or any Affiliate of Seller, on the one hand, and any Governmental Authority or a public or private utility, or any other Person, on the other hand, affecting the Project, the Project Site, the Project Real Property Agreements, the Project Equipment, the Project Improvements, the Project Permits, or any portion thereof or interest therein other than (a) Contracts between Operator and any of its subcontractors or vendors of any tier, (b) Contracts between EPC Contractor and any of its subcontractors or vendors of any tier and (c) as disclosed in the Seller's Disclosure Schedules.

3.9.6 Except as set forth on Schedule 3.9.6, as of the Firm Date and the Closing Date, there are no Actions or Claims pending or, to Seller's Knowledge, threatened, against, or affecting the Project, the Project Site, the Project Improvements, or any portion thereof or interest therein, in the nature of, or in lieu of, condemnation, land use, zoning or eminent domain proceedings, or otherwise.

3.9.7 As of the Firm Date and the Closing Date, Schedule 1.1(i) contains a true, correct, and complete list of all Project Real Property Agreements with respect to the Project. As of the Firm Date and the Closing Date, Seller has delivered to Purchaser true, correct, and complete copies of all Project Real Property Agreements.

3.10 Sufficiency of Project Assets.

3.10.1 As of the Firm Date, except as set forth in Schedule 3.10.1, the Project Assets constitute all of the Contracts, Permits (other than Purchaser Permits), Intellectual Property, rights, assets, and properties necessary to develop, construct, commission, and own the Project on

the Project Site in accordance in all material respects with applicable Laws, the Project Permits, and Prudent Operating Practices, and as of the Closing Date, except as set forth in Schedule 3.10.1, (a) the Project Assets constitute all of the Contracts, Permits (other than Purchaser Permits), Intellectual Property, rights, assets, and properties necessary to develop, construct, commission, own, operate, or maintain the Project on the Project Site in accordance in all material respects with applicable Laws, the Project Permits, and Prudent Operating Practices, and (b) other than the Project Assets, there are no other Contracts, Permits, Intellectual Property, rights, assets, or properties that are held by Seller or any Affiliate of Seller relating to, associated with, or concerning the Project, that are necessary for the development, construction, commissioning, ownership, operation, or maintenance of the Project in accordance in all material respects with applicable Laws, the Project Permits, and Prudent Operating Practices.

3.10.2 As of the Firm Date, Schedule 1.1(g) contains a true, correct, and complete list of the Major Equipment, and as of the Closing Date, (a) Schedule 1.1(g) contains a true, correct, and complete list of all Project Equipment, (b) Schedule 1.1(h) contains a true, correct, and complete list of all Project Improvements, and (c) except as set forth in Schedule 3.10.2, all Project Equipment and Project Improvements are located at the Project Site.

3.10.3 Seller's Qualifying Tax Opinion. As of the Closing Date, the facts and circumstances assumed in Seller's Qualifying Tax Opinion are true and correct in all material respects.

3.10.4 Other ITC Matters. As of the Effective Date, the Firm Date and the Closing Date:

(a) No grants have been provided by any governmental body for use in connection with the Project or with respect to which Seller or any of Seller's Affiliates is the beneficiary and which would require a reduction in Investment Tax Credits;

(b) No proceeds of any issue of state or local government obligations have been used to provide financing for the Project on which the interest is exempt from tax under Section 103 of the Internal Revenue Code within the meaning of Section 45(b)(3) of the Internal Revenue Code; and

(c) No subsidized energy financing has been provided (directly or indirectly) under a federal, state or local program in connection with the Project within the meaning of Section 45(b)(3) of the Internal Revenue Code.

3.11 No Seller Material Adverse Effect. Since the Execution Date, there has not occurred any Seller Material Adverse Effect.

3.12 Contracts.

3.12.1 As of the Firm Date and the Closing Date, Schedule 1.1(f) contains a true, correct, and complete list of all Project Contracts, including all amendments, waivers, supplements, schedules, and exhibits thereto. All Project Contracts have been entered into by Seller or assigned to Seller, and any such assignment was made in accordance with the terms and

conditions of the Project Contract. Seller has not sold, assigned, or otherwise transferred any of its rights or obligations in any Project Contract except pursuant to this Agreement and the Ancillary Agreements. As of the Firm Date, all of the Firm Transmission Agreements are in deferred status. As of the Closing Date, assuming all of the Seller's Consents have been obtained or given, all Project Contracts are assignable to Purchaser pursuant to the terms hereto and all of the Firm Transmission Agreements will no longer be in deferred status.

3.12.2 Seller has provided Purchaser with true, correct, and complete copies of all Project Contracts set forth on Schedule 1.1(f), including all amendments, waivers, supplements, schedules, and exhibits thereto, to the extent such Project Contract was entered into on or prior to the Firm Date, as of the Firm Date, and to the extent such Project Contract was entered into after the Firm Date, as of Closing Date.

3.12.3 Except as set forth on Schedule 3.12.3, as of the Firm Date and the Closing Date, no facts or circumstances exist and no event has occurred that with the giving of notice or lapse of time would entitle the EPC Contractor to any Scope Change Order or justify any claim for equitable relief under the EPC Agreement or otherwise that would include any adjustment in the Purchase Price or the date of Project Substantial Completion.

3.12.4 Neither Seller, nor to Seller's Knowledge, any other party to any Project Contract, is in default in any material respect under, and, to Seller's Knowledge, no event has occurred which, with the giving of notice or the lapse of time or both, would result in a default of Seller under, any Project Contract. Each Project Contract constitutes a legal, valid and binding agreement of Seller and, to Seller's Knowledge, of each other party thereto, enforceable in accordance with its terms.

3.12.5 Neither Seller nor any of its Affiliates has sold or transferred, agreed or committed to sell or transfer, or granted any options or rights to purchase electric power or electric capacity, in connection with or related to the Project.

3.13 Permits.

3.13.1 Lists of Permits.

(a) Part A of Schedule 1.1(b) sets forth a true, correct, and complete list of all Project Permits;

(b) Part B of Schedule 1.1(b) sets forth a true, correct, and complete list of all Firm Date Permits;

(c) Part C of Schedule 1.1(b) sets forth a true, correct, and complete list of all Purchaser Permits; and

(d) As of the Firm Date, Part D of Schedule 1.1(b) sets forth a true, correct, and complete list of the Project Permits for which Seller or any Affiliate of Seller has applied (other than any Firm Date Permits).

3.13.2 As of the Firm Date and Closing Date, with respect to each Firm Date Permit or Project Permit (other than the Purchaser Permits) that has been obtained and issued in the name of Seller or the Project as of such Firm Date or Closing Date, respectively:

(a) each such Firm Date Permit or Project Permit is legal, valid, and binding, and in full force and effect;

(b) Seller is in compliance, in all material respects, with the terms and conditions of each such Firm Date Permit or Project Permit, and, to Seller's Knowledge, no event has occurred which with the giving of notice or lapse of time, or both, would constitute material non-compliance with such terms and conditions;

(c) Except as set forth on Schedule 3.13.2(c), no Action or Claim is pending or, to Seller's Knowledge, threatened in writing, in each case, which challenges the legality, validity, or enforceability of, or threatens to revoke, suspend, or materially modify, any such Firm Date Permit or Project Permit;

(d) no written notice of noncompliance or default has been received by Seller or any Affiliate of Seller with respect to any such Firm Date Permit or Project Permit; and

(e) no information has been received by Seller or any Affiliate of Seller and, to Seller's Knowledge, there exist no conditions, facts, or circumstances that would reasonably be expected to restrict or prevent Seller from transferring any such Firm Date Permit or Project Permit to Purchaser on the Closing Date or from obtaining any Project Permit for which Seller or an Affiliate of Seller has applied or which has not been obtained as of such Firm Date or Closing Date, in each case, as and when needed in accordance with Prudent Operating Practices and applicable Law. To Seller's Knowledge, there exist no conditions, facts, or circumstances that would reasonably be expected to prevent or restrict the ability of Purchaser to obtain any Purchaser Permit.

3.13.3 Except as set forth on Schedule 3.13.3, all Firm Date Permits (other than the Purchaser Permits) have been obtained and issued in the name of Seller or the Project on or prior to the Firm Date.

3.13.4 Except as set forth on Schedule 3.13.4, all Project Permits (other than the Purchaser Permits and Firm Date Permits) have been obtained and issued in the name of Seller or the Project on or prior to the Closing Date.

3.13.5 As of the Firm Date and Closing Date, Seller has made available to Purchaser true, correct, and complete copies of all Project Permits and applications therefor in accordance with Section 5.13.

3.14 Insurance. Schedule 3.14 contains a summary description of all material insurance policies maintained by or on behalf of Seller. Such insurance policies are in full force and effect and all premiums due and payable for such insurance policies have been paid. Neither Seller nor any Affiliate of Seller has received any written notice from the insurer under any such insurance policy disclaiming coverage, reserving rights with respect to a particular claim relating to the Project or such policy in general, or canceling any such policy. To Seller's Knowledge, there is

no Claim or Action currently pending with respect to any such insurance policy relating to the Project.

3.15 Environmental Matters.

3.15.1 Seller will develop and construct the Project in compliance with Environmental Laws.

3.15.2 As of the Firm Date and the Closing Date, Seller will have made available to Purchaser true, correct, and complete copies of all environmental site assessment studies and reports and other environmental assessments, surveys, studies, audits, and reports, including reports, assessments, surveys, studies, audits, and reports relating to wetlands, air and emissions or discharges, or state or federally protected, threatened, sensitive, or endangered species, that are in the possession or control of Seller or any of its Affiliates as of or after the Execution Date, and which relate to environmental matters in connection with development, construction, ownership, use, operation, or maintenance of the Project or the Project Site under Environmental Laws or which relate to an Environmental Condition at the Project Site. All material environmental investigations, surveys, studies, audits, tests, reviews, or other analyses conducted on behalf of Seller or any Affiliate of Seller, and any correspondence or records of communication with Governmental Authorities or Persons relating to Environmental Laws, in relation to the Project, the Project Site, the Project Assets, and the Project Real Property Agreements set forth in Schedules 1.1(b), 1.1(c), 1.1(f), 1.1(g), 1.1(h), 1.1(i), and 1.1(j) have been delivered to Purchaser prior to the Effective Date of this Agreement, and, to Sellers' Knowledge, there are no other such items.

3.15.3 To Sellers' Knowledge, no portion of the Project Site has been used for the disposal of Hazardous Materials or contains or has ever contained any aboveground or underground storage tank or any surface impoundment used for the management of wastewater.

3.15.4 To Seller's Knowledge, there exist no conditions, facts, or circumstances that would reasonably be expected to result in the imposition of Liabilities under, or material noncompliance by Seller or its Affiliates or the Project with, any Environmental Laws with respect to the Project or the Project Site. Neither Seller nor any Affiliate of Seller has agreed to or is subject to any Order or Environmental Claim relating to non-compliance with any Environmental Law or to any investigation or cleanup of Hazardous Materials or Environmental Conditions with respect to the Project or the Project Site. There are no Claims or Actions pending or, to Seller's Knowledge, threatened under any Environmental Law relating to the Project or the Project Site.

3.15.5 Seller and its Affiliates have conducted all activities with respect to the development of the Project and the Project Assets in compliance with all Environmental Laws in all material respects, and no Action, hearing, or written charge, complaint, Claim, or notice has been filed or commenced, or to Sellers' Knowledge, threatened against Seller or any Affiliate of Seller with respect to the Project Assets, any applicable landowner (with respect to the Project Site), the Project, the Project Assets, or the Project Site alleging any failure to comply with or any Liability under any applicable Environmental Law. To Sellers' Knowledge, (a) the Project has been since its inception, and is currently, in compliance with all Environmental Laws, and (b) there has been no Release of any Hazardous Material on the Project Site except in amounts or

concentrations such that no Liabilities under any Environmental Law, Contract, or Project Real Property Agreement have or might arise, and such that there would be no cause for Governmental Authorities with jurisdiction over the Seller, the Project Assets, or the Project Real Property Agreements to take action if brought to its attention.

3.15.6 Seller or its Affiliates have not caused a Release of Hazardous Materials and, to Seller's Knowledge, there has been no Release of Hazardous Materials, in each case on, beneath or from the Project Site, except for Releases of Hazardous Materials that would not reasonably be expected to result in a claim by a Governmental Authority or other Person not affiliated with Purchaser or a requirement to conduct a Remediation.

3.15.7 To Seller's Knowledge, except as referenced in reports listed in Schedule 3.15.7, (a) no species protected under Environmental Laws have been observed at the Project Site, (b) no human remains or historical, archaeological, or paleontological resources regulated under Environmental Laws have been identified on the Project Site, and (c) no wetlands or water bodies regulated under Environmental Laws are located on the Project Site.

3.16 Employee and Employee Benefits Matters.

3.16.1 Seller does not employ and has never employed any employees.

3.16.2 Seller does not sponsor, maintain, contribute to, or have any obligation to contribute to, and has never sponsored, maintained, contributed to, or had any obligation to contribute to, any employee benefit plan.

3.17 Brokers. All negotiations relative to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby have been carried out by Seller directly with Purchaser without the intervention of any Person on behalf of Seller in such manner as to give rise to any valid claim by any Person against Purchaser or any of its Affiliates or any of their respective Representatives for a finder's fee, brokerage commission, or similar payment.

3.18 Intellectual Property. As of the Closing Date, Schedule 3.18 contains a true, correct, and complete list and description of all Intellectual Property necessary for the ownership, use, operation, or maintenance of the Project ("Project Intellectual Property"). As of the Closing Date, Seller shall convey and Purchaser will acquire from Seller ownership of or the right to use all the Project Intellectual Property for the ownership, use, operation, or maintenance of the Project in accordance with applicable Laws, the Project Permits, and Prudent Operating Practices, free and clear of all Liens, other than Permitted Liens. Seller has not received and is not aware of any claim in writing that any Project Intellectual Property infringes or misappropriates, in any material respect, the Intellectual Property of any other Person.

3.19 Reports. Seller has delivered to Purchaser a true, correct, and complete copy of each Report in the possession of Seller or its Affiliates, including any Reports listed on Schedule 3.19. To Seller's Knowledge, there has been no material change in any findings or conclusions of any Report delivered by Seller to Purchaser other than for which Seller has redelivered such Report to Purchaser in final form as revised to address such change pursuant to Section 5.10.3. As of the Firm Date and the Closing Date, Schedule 3.19 contains a true, correct, and complete list of all Reports.

3.20 Anti-Corruption.

3.20.1 Neither Seller, nor any of its Affiliates and to Seller's Knowledge no manager, executive, officer, agent, or other Representative of any of the aforementioned Persons has made, directly or indirectly, any bribe or kickback, illegal political contribution, payment from company funds that was incorrectly recorded on the books and records of any of the aforementioned Persons, or any unlawful payment from company funds to any Governmental Authority or any officials of any Governmental Authority in their individual capacities, in either case for the purpose of affecting their action or the actions of the jurisdiction that they represent to obtain favorable treatment in securing any business, Contracts, or Permits, or to obtain special concessions of any kind whatsoever, or illegal payment from company funds to obtain or retain any business.

3.20.2 Neither Seller, nor, to Seller's Knowledge, any of its Affiliates nor any of their respective directors, officers, agents, employees, or, to Seller's Knowledge, any other Persons acting on their behalf has, in connection with the operation of their respective businesses, (a) used any corporate or other funds for unlawful contributions, payments, gifts, or entertainment, or made any unlawful expenditures relating to political activity to officials, candidates or members of any Governmental Authority or political party or organization, or established or maintained any unlawful or unrecorded funds in violation of Section 104 of the U.S. Foreign Corrupt Practices Act of 1977, as amended, the United Kingdom Bribery Act of 2010, or any other similar applicable Law, (b) paid, accepted, or received any unlawful contributions, payments, expenditures, or gifts, or (c) violated in any material respect or operated in material non-compliance with any export restrictions, anti-boycott regulations, embargo regulations, or other applicable Law.

3.21 Solvency. No petition or notice has been presented, no Order has been made, and no resolution has been passed for the Bankruptcy, liquidation, winding-up, or dissolution of Seller. No receiver, trustee, custodian, or similar fiduciary has been appointed over the whole or any part of Seller's assets or the income of Seller. Seller has no plan or intention of, nor has received any written notice that any other Person has any plan or intention of, filing, making, or obtaining any such petition, notice, Order, or resolution or of seeking the appointment of such a receiver, trustee, custodian, or similar fiduciary.

3.22 Taxes.

3.22.1 All Tax Returns that were required to be filed with respect to the Project Assets have been timely filed, and such Tax Returns were prepared in compliance with applicable Law and were true, correct, and complete in all material respects. All Taxes required to be paid with respect to the Project Assets (whether or not shown due on any Tax Returns) have been timely paid.

3.22.2 There are no audits, Claims, Actions, assessments, levies, or administrative or judicial proceedings pending, or to Seller's Knowledge, threatened, proposed, or contemplated with respect to the Project Assets by any Taxing Authority.

3.22.3 There is no extension or waiver of the application of any statute of limitations of any jurisdiction regarding the assessment or collection of any Tax with respect to the Project Assets.

3.22.4 Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, member, or other third party.

3.22.5 No written claim has ever been made by a Taxing Authority in a jurisdiction where a Tax Return is not filed by, or with respect to, Seller or the Project Assets, that Seller (with respect to the Project Assets) or any of the Project Assets is or may be subject to Tax in that jurisdiction.

3.22.6 No power of attorney is currently in effect, and no Tax ruling has been requested of any Governmental Authority with respect to any Tax matter, relating to the Project Assets.

3.22.7 Seller (or if Seller is a disregarded entity, the Person treated as owning Seller's assets for income Tax purposes) is not a foreign person as defined in Section 1445(f)(3) of the Code.

3.22.8 Neither Seller nor any Affiliate of Seller has taken, nor does Seller or any Affiliate of Seller intend to take, a position on any Tax Return that is inconsistent with the Project, including the Project Assets, being Placed In Service by Purchaser. Each part of the Project, including the Project Assets, is new equipment. Neither Seller nor any Affiliate of Seller has claimed, nor does Seller or any Affiliate of Seller intend to claim, on any Tax Return any depreciation or amortization deductions, or any other tax credits or deductions that are available with respect to ownership or operation of the Project or any property that is part of the Project, including the Project Assets.

3.22.9 None of the property in the Project, including the Project Assets, is "tax-exempt bond financed property" or "tax-exempt use property" within the meaning of Section 168 of the Code, or imported property of the kind described in Section 168(g)(6) of the Code. No election under Section 168(g)(7) of the Code has been made with respect to any part of the Project, including the Project Assets. The Project, including the Project Assets, is located in its entirety in the United States of America.

3.22.10 No portion of the Project, including the Project Assets, has benefited from the proceeds of any federal or state grant or rebate program, and no application with respect to any such grant or rebate has been filed or submitted.

3.22.11 No portion of the Project, including the Project Assets, is or has been financed with, and neither Seller nor any Affiliate of Seller has benefited from: (a) a grant provided by the United States of America, a state, a political subdivision of a state or any other Governmental Authority; (b) proceeds of an issue of state or local government obligations, the interest on which is exempt from tax under Section 103 of the Code; or (c) any subsidized energy financing provided (directly or indirectly) under a federal, state, or local program provided in connection with the Project (in each case, within the meaning of Section 45(b)(3) of the Code).

3.23 Anti-Forced Labor Compliance. No portion of the Project, including the Project Assets, is or has been in violation of an Anti-Forced Labor Law.

3.24 Prevailing Wage and Apprenticeship Requirements. Each representation, warranty, or covenant contained in any PWA Requirements Certificate and made by Contractor or an Affiliate of Contractor is true and correct as of the date made and, to Contractor's knowledge after due inquiry. To Contractor's knowledge after due inquiry, any certificate or other documentation provided by any Tax Subcontractor to Contractor pursuant to 9.2.7 is true and correct as of the date made.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as set forth in Purchaser's Disclosure Schedule, and subject to the disclaimers, acknowledgements and agreements contained in Section 10.2 and Section 13.16, Purchaser represents and warrants to Seller as of the Effective Date, the Firm Date and the Closing Date (except for those representations and warranties made as of a specified date, which shall be true and correct as of that date) as follows:

4.1 Existence. Purchaser is duly formed, validly existing, and in good standing, as applicable, under the Laws of the jurisdiction of its formation. Purchaser has the requisite corporate power and authority to own, operate, and lease its properties and assets. Purchaser is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of the business transacted by it makes qualification necessary, except where the failure to be so qualified, licensed, or in good standing would not be reasonably expected to have a Purchaser Material Adverse Effect.

4.2 Authority. Purchaser has all requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is (or will be) a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder and to complete the transactions contemplated hereby and thereby. The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which Purchaser is (or will be) a party in connection with the transactions contemplated hereby, and the performance by Purchaser of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary corporate action.

4.3 Binding Agreement. This Agreement and the Ancillary Agreements to which Purchaser is (or will be) a party have been (or will be when delivered) duly and validly executed and delivered by Purchaser and, assuming due and valid authorization, execution, and delivery thereof by Seller and each other party thereto, this Agreement and the Ancillary Agreements to which Purchaser is (or will be) a party are (or will be when delivered) valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms.

4.4 No Conflicts. The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which it is (or will be) a party does not, and the performance by Purchaser of its obligations under this Agreement and the Ancillary Agreements to which it is (or will be) a party, and the consummation of the transactions contemplated hereby and thereby will not:

4.4.1 conflict with or result in a violation or breach of any of the terms, conditions, or provisions of Purchaser's Organizational Documents;

4.4.2 assuming all of the consents and approvals set forth in Schedule 4.4.2 (the "Purchaser's Consents") have been obtained or given, result in a default (or give rise to any right of termination, cancellation, or acceleration) under any of the terms, conditions, or provisions of any Contract or other obligation (with or without notice or lapse of time, or both) to which Purchaser is a party or by which any of its assets and properties may be bound, except for such defaults (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been obtained in writing (true, correct, and complete copies of which have been furnished to Seller); or

4.4.3 assuming (a) all of the Purchaser's Consents have been obtained or given, and (b) receipt of any Required Approvals, conflict with or result in a violation or breach of any term or provision of any Law applicable to Purchaser or any of its assets and properties.

4.5 Governmental Approvals and Filings. Except (a) as set forth in Schedule 4.5, (b) for any Purchaser's Consents, and (c) for receipt of any Required Approvals, no consent or approval of, filing with, or notice to, any Governmental Authority is required in connection with the execution, delivery, and performance by Purchaser of this Agreement or any of the Ancillary Agreements to which Purchaser is (or will be) a party or the consummation by Purchaser of the transactions contemplated hereby or thereby.

4.6 Legal Proceedings. Except as set forth in Schedule 4.6, there are no Claims or Actions (a) outstanding or pending to which Purchaser is a party or (b) to Purchaser's Knowledge, threatened in writing against Purchaser or any of its assets and properties, which seek or would be reasonably expected to result in (i) the issuance of an Order restraining, enjoining, or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement or any of the Ancillary Agreements, or (ii) individually or in the aggregate, a Purchaser Material Adverse Effect.

4.7 Brokers. All negotiations relative to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby have been carried out by Purchaser directly with Seller without the intervention of any Person on behalf of Purchaser in such manner as to give rise to any valid claim by any Person against Seller or any of its Affiliates or any of their respective Representatives for a finder's fee, brokerage commission, or similar payment.

4.8 Financial Resources. Purchaser has and, as and when required pursuant to the terms of this Agreement will have, access to cash sufficient to satisfy its obligations to pay the Purchase Price.

4.9 Solvency. No petition or notice has been presented, no Order has been made, and no resolution has been passed for the Bankruptcy, liquidation, winding-up, or dissolution of Purchaser. No receiver, trustee, custodian, or similar fiduciary has been appointed over the whole or any part of Purchaser's assets or the income of Purchaser. Purchaser has no plan or intention of, nor has it received any written notice that any other Person has any plan or intention of, filing,

making, or obtaining any such petition, notice, Order, or resolution or of seeking the appointment of such a receiver, trustee, custodian, or similar fiduciary.

4.10 Anti-Corruption.

4.10.1 Neither Purchaser, nor any of its Affiliates and to Purchaser's Knowledge no manager, executive, officer, agent, or other Representative of any of the aforementioned Persons has made, directly or indirectly, any bribe or kickback, illegal political contribution, payment from company funds that was incorrectly recorded on the books and records of any of the aforementioned Persons, or any unlawful payment from company funds to any Governmental Authority or any officials of any Governmental Authority in their individual capacities, in either case for the purpose of affecting their action or the actions of the jurisdiction that they represent to obtain favorable treatment in securing any business, Contracts, or Permits, or to obtain special concessions of any kind whatsoever, or illegal payment from company funds to obtain or retain any business.

4.10.2 Neither Purchaser, nor, to Purchaser's Knowledge, any of its Affiliates nor any of their respective directors, officers, agents, employees or, to Purchaser's Knowledge, any other Persons acting on their behalf has, in connection with the operation of their respective businesses, (a) used any corporate or other funds for unlawful contributions, payments, gifts, or entertainment, or made any unlawful expenditures relating to political activity to officials, candidates, or members of any Governmental Authority or political party or organization, or established or maintained any unlawful or unrecorded funds in violation of Section 104 of the Foreign Corrupt Practices Act of 1977, as amended, the United Kingdom Bribery Act of 2010, or any other similar applicable Law, (b) paid, accepted, or received any unlawful contributions, payments, expenditures, or gifts, or (c) violated in any material respect or operated in material non-compliance with any export restrictions, anti-boycott regulations, embargo regulations, or other applicable Law.

ARTICLE V COVENANTS

5.1 Efforts to Close and Fulfillment of Conditions. After the Execution Date and prior to the Closing:

5.1.1 Each Party shall use Commercially Reasonable Efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper, or advisable under Law to complete and make effective the transactions contemplated by this Agreement. Such actions shall include each Party using Commercially Reasonable Efforts to ensure satisfaction of the conditions precedent to its obligations hereunder, as soon as practicable after the Execution Date. Each Party shall reasonably cooperate with the other Party in performing the obligations required by this Section 5.1, including the negotiation, execution, and assignment of Project Contracts.

5.1.2 Subject to Section 5.3, each Party shall not take any action, and shall not permit any action controlled by it to be taken, which would reasonably be expected to delay the completion of the transactions contemplated by this Agreement.

5.2 Consents and Approvals. Without limiting the generality of Section 5.1, but subject in all respects to Section 5.3:

5.2.1 After the Execution Date and prior to Closing, each Party shall provide reasonable cooperation to the other Party in obtaining consents or approvals of, making all filings with and giving all notices to Governmental Authorities or other Persons required to consummate the transactions contemplated by this Agreement and the Ancillary Agreements. The Parties shall use Commercially Reasonable Efforts to respond promptly and accurately to any requests for additional information made by and otherwise to cooperate with any such Governmental Authorities. The Parties agree that they shall consult with each other with respect to the transfer to Purchaser of the Project Assets and Assumed Liabilities and the making, giving, or obtaining by Purchaser or Seller of any Required Approvals and applicable Permits or Consents of all Governmental Authorities and other third-party Persons. Each Party shall cooperate in good faith with all such Governmental Authorities and use Commercially Reasonable Efforts to complete promptly and lawfully the transactions contemplated by this Agreement.

5.2.2 Each Party shall not take any action, and shall not permit any action controlled by it to be taken, which would reasonably be expected to impair the ability of the Parties to secure all Required Approvals with or from any Governmental Authority to consummate the transactions hereunder, or take any action with any Governmental Authority relating to the foregoing, or agree, in writing or otherwise, to do any of the foregoing, in each case which would reasonably be expected to prevent the consummation of the transactions contemplated hereby or result in the failure to satisfy any condition to consummation of the transactions contemplated hereby. Each Party shall respond to and use Commercially Reasonable Efforts to resolve as promptly as reasonably practicable any objections asserted by any Governmental Authority with respect to the transactions contemplated by this Agreement.

5.3 Limitation. Notwithstanding anything to the contrary in this Article V, nothing in Section 5.1 or Section 5.2 shall require, or be construed to require, Purchaser or Seller or any of their respective Affiliates to agree to: (a) sell, hold, divest, discontinue, or limit, before or after the Closing Date, any assets, businesses, or interests of Purchaser or Seller or any of their respective Affiliates (other than pursuant to this Agreement); (b) materially limit Purchaser's freedom of action with respect to, or its ability to own and control the Project Assets; (c) waive any of their respective conditions to Closing set forth in Section 6.1, Section 6.2, Section 6.3, Section 6.4, or Section 6.5; or (d) any modification or waiver of the terms and conditions of this Agreement.

5.4 Real Estate Matters.

5.4.1 Initial Title Cure Period.

(a) Title Commitments, ALTA Survey. As soon as reasonably practicable after the Execution Date and not later than [DATE], Seller shall deliver to Purchaser (i) a Title Commitment issued by the Title Company with respect to each parcel of real property comprising the Project Site or that is the subject of a Project Real Property Agreement, and (ii) a current ALTA Survey with respect to each parcel of real property comprising the Project Site. The ALTA Survey shall include an overlay of the proposed Project Facilities to be installed on the Project Site as indicated by the Project Site Plan.

(b) Title Curative Requirements. As soon as practicable (but, in any event, no later than thirty (30) days) after Seller has delivered to Purchaser any Title Commitments or any ALTA Surveys required to be delivered pursuant to Section 5.4.1(a), Purchaser may provide Seller with a title objection letter (the "Title Objection Letter") (for the avoidance of doubt, a separate thirty (30) day period shall be triggered and measured for each separate delivery of Title Commitment(s) and ALTA Survey(s)) delivered in accordance with Section 13.1 which identifies all exceptions to title contained in the Title Commitments or ALTA Surveys that are both (x) exceptions not constituting a Permitted Lien under clauses (a) to (q) of the definition of Permitted Lien, and (y) exceptions identified by Purchaser as Objectionable Title Matters (such identified exceptions, "Initial Title Objections." In order for an exception to be an Initial Title Objection hereunder, Purchaser must identify such Initial Title Objection in the Title Objection Letter within the prescribed thirty (30) day period. After delivery of the Title Objection Letter to Seller as provided above, Seller will have thirty (30) days to review and to respond in writing with objections it may have to the proposed Initial Title Objections identified in the Title Objection Letter. If Seller objects to any of the proposed Initial Title Objections identified in the Title Objection Letter, Purchaser and Seller agree to work together in good faith to discuss and consider such objections on which matters will be included as Initial Title Objections. To assist Seller with expediting its curative efforts required to address the Initial Title Objections, prior to the date on which Purchaser delivers the Title Objection Letter, Purchaser will, as promptly as practicable after the delivery by Seller to Purchaser of any Title Commitments and the ALTA Surveys, notify Seller from time to time in good faith of exceptions to title that Purchaser reasonably believes will be Initial Title Objections or are likely to require Curative Documents.

(c) Title Objections. From the receipt of the Title Objection Letter to ten (10) Business Days prior to the Closing Date, Seller shall use Commercially Reasonable Efforts to cause to be cured each Initial Title Objection to Purchaser's reasonable satisfaction by Curative Actions or by utilizing Curative Documents on forms approved by Purchaser and the Title Company.

5.4.2 Secondary Title Cure Period. On or before sixty (60) days prior to the Closing Date (but in no event more than one hundred twenty (120) days prior to the Closing Date), Seller shall have delivered to Purchaser (a) an update of the Title Commitment ("Updated Title Commitment") with respect to each parcel of real property comprising the Project Site or that is the subject of a Project Real Property Agreement, and (b) an updated ALTA Survey ("Updated ALTA Survey") with respect to each parcel of real property comprising the Project Site upon which Project Facilities are or will be located. To the extent that the Updated Title Commitment or Updated ALTA Survey identifies one or more Liens, other than Permitted Liens, that were not reflected on the Title Commitment or ALTA Survey or other revisions to the Title Commitment or ALTA Survey (including, if applicable, any matter in any underlying document that was not provided to Purchaser and that is delivered to Purchaser after Purchaser's delivery of the Title Objection Letter), Purchaser may identify any such Liens, other than Permitted Liens, to which it objects (collectively, "Closing Date Title Objections") in an updated Title Objection Letter delivered to Seller within thirty (30) days after Purchaser's receipt of the later of the Updated Title Commitment and Updated ALTA Survey. From the receipt of the updated Title Objection Letter to the Closing Date, Seller shall use Commercially Reasonable Efforts to cause to be cured each Closing Date Title Objection to Purchaser's reasonable satisfaction by Curative Actions or by utilizing Curative Documents on forms approved by Purchaser and the Title Company.

5.4.3 Costs Associated with Real Property Matters. Seller will be responsible for the payment for all Title Commitments (and any amendments, updates, and supplements thereto) and all recording charges and expenses incurred in connection with recording any Project Real Property Agreement (or amendments or memoranda thereof), any Curative Documents, and any fees and related charges incurred for title curative measures, the Title Commitment, and Updated Title Commitment. In the event Seller fails to effectuate Curative Action(s) satisfactory to Purchaser, and the Title Company is unwilling to insure over (at Seller's expense) any of the title exceptions set forth in Exhibit P hereto (each, an "Outstanding Title Exception"), Seller will indemnify the Purchaser Indemnified Parties for Losses incurred by any Purchaser Indemnified Party to the extent resulting from any of the Outstanding Title Exceptions, up to [Amount] ([\$XXX]) in the aggregate. Seller's indemnification obligation for Outstanding Title Exceptions shall survive for a period of three (3) years following the Closing.

5.4.4 Permitted Exceptions. It is understood and agreed that, notwithstanding anything to the contrary, the following shall be considered "Permitted Exceptions" for all purposes hereunder: (a) any exception to title appearing on a Title Commitment or ALTA Survey that is not identified by Purchaser as an Initial Title Objection on a Title Objection Letter within the prescribed thirty (30)-day period pursuant to Section 5.4.1(b); (b) any exception to title appearing on the Updated Title Commitment or ALTA Survey that is not identified by Purchaser as a Closing Date Title Objection in an updated Title Objection Letter within the prescribed thirty (30)-day period pursuant to Section 5.4.2; and (c) any Initial Title Objection or Closing Date Title Objection that the Title Company is willing to insure over by affirmative coverage or endorsement in form and substance and on terms reasonably acceptable to Purchaser.

5.4.5 Project Real Property Agreements. Except as consented to by Purchaser in writing, (a) Seller shall not amend or otherwise modify any Project Real Property Agreement existing as of the Execution Date such that the financial obligations imposed on the lessee, purchaser, or grantee under such Project Real Property Agreement would be increased and (b) Seller shall not enter into any Project Real Property Agreement after the Execution Date (not covered by Section 5.4.5(a) above) other than in form and substance substantially and in all material respects the same as the Project Real Property Agreements existing as of the Execution Date.

5.4.6 Project Site Plan. Seller will submit to Purchaser before the Firm Date substantially completed drafts or subsequent versions of the Project Site Plan prior to finalization together with all necessary environmental buffer assessments and reports, to afford Purchaser an opportunity to review the same; provided that Purchaser's review period will not exceed thirty (30) days. Seller shall cooperate with Purchaser and shall consider and address any reasonable comments or questions relating to the Project Site Plan that are reasonably and timely requested by Purchaser within such review period. Purchaser shall cooperate and respond to any reasonable and timely request from Seller for input or comment with respect to any initial draft or subsequent version of the Project Site Plan.

5.5 Conduct of Business.

5.5.1 Commencing on the Execution Date and ending on the earlier of the Closing Date and the date as of which this Agreement is validly terminated by Purchaser or Seller in

accordance with this Agreement, except as otherwise required or permitted hereby or consented to by Purchaser in writing, Seller shall conduct its business in the ordinary course consistent with applicable Laws, Project Permits, Prudent Operating Practices, and in accordance with this Section 5.5.

5.5.2 Without limiting the foregoing, except with respect to any Permitted Update Matter or as consented to by Purchaser in writing, which consent shall not be unreasonably withheld, conditioned, or delayed, Seller shall not, and shall not cause or permit its Affiliates with respect to the Project to:

(a) enter into any Contract or incur any obligations or Liabilities relating to the Project, the Project Assets, or the Project Site, other than (i) instruments, Contracts and documents entered into in accordance with Seller's obligations under Section 5.4 and (ii) the Contracts described on Schedule 5.5.2(a);

(b) modify, amend, terminate, assign, waive, or release any rights or claims under or provide any consent under, in each case, the EPC Agreement (except for Scope Change Orders permitted hereunder), Project Site Plan, or any other Project Contract, including any modification, amendment, consent, waiver, release, or assignment that: (i) has or would reasonably be expected to have an adverse effect on the capacity, availability, operations (including costs of operations), maintenance (including the cost of maintenance), reliability, or safety (including safety of construction) of the Project; (ii) causes or would reasonably be expected to cause Project Substantial Completion not to occur by the Guaranteed Substantial Completion Date; (iii) amends any of the performance remedies or warranties applicable to the Project; or (iv) amends any of the defined terms or provisions from the EPC Agreement or any other Project Contract; provided, however, that Seller shall be entitled to make any modification, amendment, consent, waiver, release, or assignment with respect to the EPC Agreement or any Project Contract that is not prohibited by sub-clauses (i)-(iv) above and which solely impacts matters that will be Excluded Liabilities; provided, further, that Seller shall provide Purchaser with a copy of any proposed modification, amendment, consent, waiver, release, or assignment with respect to the EPC Agreement or any Project Contract at least five (5) Business Days prior to execution.

(c) sell, lease, or otherwise dispose of, or incur or permit to exist a Lien (other than a Permitted Lien) on, any of the Project Assets;

(d) agree or consent in writing to any matter in connection with any proceeding by or before any Governmental Authority related to the Project that could reasonably be expected to have any adverse effect on the capacity, availability, operations (including costs of operations), maintenance (including the cost of maintenance), reliability, or safety (including safety of construction) of the Project;

(e) amend or modify the Project Site Plan after the Firm Date;

(f) approve modifications, changes, alternatives or amendments to technical requirements identified in the Technical Specifications; or

(g) enter into any agreement or otherwise commit to take any actions described in the foregoing clauses.

5.5.3 Notwithstanding Section 5.5.1 or Section 5.5.2, or any other provision to the contrary in this Agreement, Seller and its Affiliate may take reasonable actions with respect to Emergency situations with notice to Purchaser as soon as practically possible.

5.5.4 Seller shall cause the Project to be designed, engineered, constructed, and commissioned in compliance with the Technical Specifications, applicable Laws, Project Permits, Prudent Operating Practices, and otherwise in compliance with the EPC Agreement.

5.5.5 If Purchaser, based on Project documentation, including the monthly progress report, the plan of the week, and the Project Schedule and updates thereto (as such documents are defined in the EPC Agreement), reasonably determines that the Project will not achieve Project Substantial Completion on or before the Guaranteed Substantial Completion Date, Purchaser may provide written notice to Seller specifying the grounds for such determination. Within ten (10) Business Days after receipt of such notice, Seller shall either (i) provide Purchaser with documentation substantiating that the Project is on schedule for timely achievement of Project Substantial Completion by the Guaranteed Substantial Completion Date or (ii) develop a plan, which shall include a resource loaded schedule and other documentation (a "Remedial Action Plan") that demonstrates a plan for the EPC Contractor to achieve Project Substantial Completion on or before the Guaranteed Substantial Completion Date. Any Remedial Action Plan shall be subject to Purchaser's written approval, which shall not be unreasonably delayed, conditioned, or denied. Upon agreement on a Remedial Action Plan, Seller shall take all necessary steps to implement the plan with the EPC Contractor, without prejudice to Purchaser's right to request subsequent relief under this Section 5.

5.6 Purchaser's Inspection Right.

5.6.1 General Access, Information Covenant. Subject to Section 5.6.4, commencing on the Execution Date and ending on the earlier of the Closing Date and the date as which this Agreement is validly terminated in accordance with this Agreement, Seller and its Affiliates shall provide Purchaser, its Related Persons, and its authorized Representatives access, upon reasonable prior notice, to the Project, the Project Site, the Project Assets, and the Books and Records, to the extent such access is related to Purchaser's obligations and rights hereunder; provided, however, that any such access shall be conducted during normal business hours and all Project work hours in such manner as to not materially and unreasonably impede the construction of the Project, including Seller's or its Affiliates' activities related to the development and construction of the Project.

5.6.2 On Site Access; Construction Activities. Subject to the terms of this Agreement including Section 5.6.4, from the Effective Date until the earlier of the Closing Date and the date as of which this Agreement is validly terminated in accordance with this Agreement, Seller and its Affiliates shall provide Purchaser, its Related Persons, and its authorized Representatives with the project documentation, information, and the access rights set forth in the Purchaser Access and Communications Protocol attached as Exhibit [XX] to the EPC Agreement. Purchaser may from time to time during construction and prior to the Closing Date, request that Seller and its Affiliates perform additional work for the Project under the EPC Agreement, in which case Seller and its Affiliate shall reasonably cooperate by providing pricing and schedule impacts of such Purchaser proposed additional work. If mutually agreed, such additional work

shall be at Purchaser's expense as an addition to the Purchase Price and with schedule adjustment, if any.

5.6.3 Communications with Contractors, Subcontractor, or Vendors. Seller shall select all Major Subcontractors and Major Equipment Suppliers in accordance with the EPC Agreement. Purchaser shall have the right to approve all Major Subcontractor and Equipment Warranties that do not meet the Minimum Equipment Warranty Requirements pursuant to the EPC Agreement (each as defined therein). Notwithstanding anything to the contrary in this Agreement, between the Execution Date and the Closing Date, in no event will Purchaser or any of Purchaser's Related Persons or Representatives, who are directly involved in the Project's development and construction activities, hold any meetings with, communicate with or otherwise direct the work (directly or indirectly) of any contractors (including the EPC Contractor or any Subcontractor), suppliers, or other vendors of Seller or its Affiliates engaged in connection with the Project, customers of Seller, or any Representatives of any Governmental Authority regarding the Project (other than with OPUC and as required or permitted hereunder), without the prior written consent of the site manager as designated by Seller, which consent shall not be unreasonably delayed, conditioned, or denied; provided the site manager may condition such meeting on Purchaser identifying the subject matter topics or agenda of such meetings and subject to such meetings being scheduled, timed, and conducted in a reasonably efficient manner and not causing delay or interference in the operation of the Project, including Seller's or its Affiliates' activities related to the development and construction of the Project. At any such meeting consented to by Seller in writing, a Representative of Seller will be entitled to participate therein.

5.6.4 Safety; Compliance with Law. In connection with Purchaser's rights under this Section 5.6, Purchaser shall, and shall cause Purchaser's Related Persons and authorized Representatives, (a) to comply with all Laws and all Project Site safety and security rules and (b) not to interfere in any respect with the development, construction, ownership, and operation of the Project, including the activities of Seller, its Affiliates, the EPC Contractor, or Subcontractors. Seller may condition the access of Purchaser, its Related Persons, or its Representatives on completion of safety and security training conducted or required by the EPC Contractor, Seller, or its Affiliates; provided that Seller shall promptly cause such training to be provided upon Purchaser's request. Seller or its applicable Representatives will have the power and authority to cause the removal of Purchaser's Related Persons or Representatives from the Project Site if such Person does not comply with such Laws or safety and security rules.

5.6.5 Risk of Loss; Indemnity. Purchaser assumes any and all risks of loss associated with or arising out of the access and other rights under this Section 5.6, and Purchaser agrees to indemnify and hold harmless Seller, its Affiliates, and their respective Representatives for any and all Losses incurred by Seller, its Affiliates, or their respective Representatives for any bodily injuries or property damage arising out of the access and other rights under this Section 5.6, in each case as a result of the negligence of Purchaser, its Related Persons, or its Representatives.

5.7 Insurance. As set forth in Schedule 3.14 and Schedule 5.7, Seller shall maintain or cause to be maintained in full force and effect insurance coverage with respect to the Project until the Closing. From and after the Closing, Purchaser shall be solely responsible for procuring or causing to be procured insurance with respect to the Project. Purchaser will be solely responsible for providing insurance and for responding to any claims pertaining to the period after the Closing.

If any claims are actually made prior to the Closing Date (or after the Closing Date with respect to claims pertaining to the period prior to the Closing Date) under any insurance policy applicable to the Project or Project Assets, then Seller shall use Commercially Reasonable Efforts at the expense of Seller to file, notice, and otherwise continue to pursue such claims and recover proceeds under the terms of such policies (but only to the extent such policies otherwise permit such recovery), and, from and after the Closing, Seller shall pay over to Purchaser any proceeds of any insurance recovery under any such policy by Seller, other than any such proceeds that have been or will be applied to repair or replace the property subject thereto.

5.8 Update of Seller's Disclosure Schedule. From time to time, Seller may, and no later than (i) ten (10) days prior to the Firm Date, and (ii) thirty (30) days prior to the Closing Date, Seller shall, supplement or amend Seller's Disclosure Schedule previously delivered by Seller with respect to any fact, matter, condition, event, or circumstance, including any Permitted Update Matter, arising after the Execution Date which, if existing, occurring, or known on or before the Execution Date, the Firm Date, or the Closing Date, would have been required to be set forth or described in Seller's Disclosure Schedule (each, an "Update") in order for the representations and warranties in Article III to be true and correct.

5.8.1 Material Adverse Effect Update Matters. If the facts, matters, conditions, events, or circumstances described in an Update (the "Disclosure Items") are not Permitted Update Matters and have, or would be reasonably expected to have, a Seller Material Adverse Effect, and therefore would permit Purchaser to terminate this Agreement pursuant to Section 7.1.3 (Seller Material Breach; Seller Material Adverse Effect Update), then either Seller or Purchaser may elect to terminate this Agreement, in which case Seller shall be liable for the Seller Default Termination Payment pursuant to Section 7.2.3(a). If neither Seller nor Purchaser elects to terminate this Agreement pursuant to this Section 5.8.1, then Seller shall be permitted to update the applicable Schedule(s) to properly reflect the Disclosure Items disclosed to Purchaser in such Update, and the applicable representations and warranties of Seller set forth in this Agreement subject to the Update made following the Update shall be subject to the Schedule(s) attached hereto, as modified or amended by the Disclosure Items in such Update, for purposes of satisfying the conditions set forth in Section 6.1.1 or Section 6.4.1, as applicable, and notwithstanding anything to the contrary in this Agreement (including Section 8.1) the Disclosure Items disclosed in the Update may not be the basis for any indemnification by Seller pursuant to Section 8.1.1.

5.8.2 Non-Material Adverse Effect Update Matters. If the Disclosure Items disclosed in an Update are not Permitted Update Matters and do not have, and would not reasonably be expected to have, a Seller Material Adverse Effect and therefore would not permit a termination by Purchaser under Section 7.1.3 (Seller Material Breach; Seller Material Adverse Effect Update), then such Disclosure Items shall not be grounds pursuant to Section 6.1.1 or Section 6.4.1 for Purchaser to refuse to perform its obligations to effect the Firm Date or the Closing, as applicable, and if the Closing occurs, then notwithstanding anything to the contrary in this Agreement but subject to Section 5.8.3, the Disclosure Items disclosed in such Update that constitute breaches of one or more representations or warranties of Seller in Article III as of the date hereof, the Firm Date, or the Closing Date may be the basis for indemnification by Seller pursuant to Section 8.1.1.

5.8.3 Indemnity Matters. In order for Purchaser to make an indemnity claim under Article VIII with respect to a Disclosure Item in accordance with Section 5.8.2, Purchaser must deliver written notice to Seller within fifteen (15) Business Days of Purchaser receiving from Seller, a written notice specifying in reasonable detail (i) the basis for such possible indemnification by Seller pursuant to Section 8.1 with respect to such Disclosure Items and, (ii) to the extent practicable, the amount of (or Seller's good faith estimate of) the Losses which would be incurred by, or imposed upon, one or more Purchaser Indemnified Parties on account of the basis for such possible claim for indemnification (each hereafter, an "Indemnity Exception"); provided, however, that in no event shall such estimate limit or restrict in any manner the amount of Losses that Purchaser Indemnified Parties may ultimately seek and recover pursuant to Article VIII. If Purchaser does not deliver such written notice to Seller within fifteen (15) Business Days of receipt of the relevant Indemnity Exception notification by Seller described above, Purchaser will not have the right to make an indemnity claim under Article VIII with respect to a breach of the applicable representations and warranties of Seller set forth in this Agreement to which the Disclosure Items included in such Update applied. In the absence of receipt of Seller's written Indemnity Exception notification to Purchaser described above, with respect to the relevant Update, there shall be no time limit on Purchaser's right to make an indemnity claim under Article VIII with respect to a Disclosure Item in accordance with Section 5.8.2. If Seller's aggregate liability under Section 8.1 with respect to Indemnity Exceptions would reasonably be expected to exceed an amount equal the Liability Cap, then either Seller or Purchaser may, within fifteen (15) Business Days following delivery to Seller of the applicable Indemnity Exception, elect to terminate this Agreement in accordance with Section 7.1.5 and Seller shall be liable for the Seller Default Termination Payment pursuant to Section 7.2.3(a).

5.9 Liquidated Damages; Firm Transmission Agreements.

5.9.1 Delay LDs. Seller shall pay Purchaser liquidated damages at a daily rate of [Amount] dollars ([$\$XXX$]) per day for Project delay ("Delay LDs") in the event the Project fails to achieve Project Substantial Completion on or before the Guaranteed Substantial Completion Date as such date may be extended in accordance with this Agreement as a result of a Force Majeure Delay or a Purchaser Caused Delay. Delay LDs shall not exceed the Delay LD Cap.

5.9.2 Firm Transmission Agreements.

(a) [Add Transmission Agreement requirements.]

5.10 Reports.

5.10.1 Draft Reports. Seller will submit to Purchaser substantially completed drafts or subsequent versions of the Reports prior to finalization, to afford Purchaser an opportunity to review the same; provided Purchaser's review period will not exceed fifteen (15) Business Days. Seller shall cooperate with Purchaser to consider, and, if appropriate, relay to the preparer of the Report, any reasonable comments or questions relating to such Report that are reasonably and timely requested by Purchaser within such review period. Purchaser shall cooperate and respond to any reasonable and timely request from Seller for input or comment with respect to any initial draft or subsequent version of a Report.

5.10.2 Final Reports. Prior to the Firm Date, Seller shall deliver to Purchaser the latest version of each Report following finalization. Each such Report will be deemed acceptable for purposes of Section 6.1.12 and Section 6.4.6 if it: (a) has been prepared by a qualified firm or consultant in accordance with Section 5.10.5; (b) is not materially deficient in form or content in accordance with Prudent Operating Practices, the Project Permits, and applicable Law; and (c) the content of the Report does not indicate any event, result, occurrence, development, fact, change, or effect of whatever nature or kind that has or would reasonably be expected to have a Seller Material Adverse Effect.

5.10.3 Change to Reports. If after delivery to Purchaser, to Seller's Knowledge there is a material change in any findings or conclusions of a Report delivered to Purchaser pursuant to Section 5.10.2, then Seller shall redeliver such Report to Purchaser in final form to reflect such change (an "Additional Report"), whereupon Purchaser will have such review and acceptance rights as contained in Section 5.10.2, which provisions shall apply *mutatis mutandis* to such Additional Report. Each Additional Report will be deemed acceptable for purposes of Section 6.1.12 and Section 6.4.6 if it satisfies the requirements in Section 5.10.2(a)–(c).

5.10.4 Reliance Letters. Seller shall (a) obtain from those Persons who prepared the Reports described on Schedule 5.10.4 and (b) use Commercially Reasonable Efforts to obtain from those Persons who prepared material Reports that are not described on Schedule 5.10.4 but that are part of the Project Assets and that Purchaser reasonably request, in each case, customary and reasonable letters or other authorizations from such Persons, which letters or other authorizations will allow Purchaser to rely on such Reports.

5.10.5 Qualified Firms and Consultants. The firms and consultants listed on Schedule 5.10.5 will be deemed to be qualified for all purposes under this Agreement. Any other firm or consultant will be subject to the approval of Purchaser (such approval not to be unreasonably withheld, conditioned, or delayed). Seller may, but is not required to, submit any such other firm or consultant for Purchaser's approval, and such approval will be deemed given if Purchaser does not affirmatively reject such firm or consultant by notice delivered within fifteen (15) Business Days of Seller's submission, in each case indicating the basis for any such rejection in reasonable detail.

5.11 Certain Agreements.

5.11.1 EPC Agreement. From the Execution Date to the Closing Date and after the Closing Date until achievement of Final Completion pursuant to Section 5.14.2, Seller shall administer its rights and obligations under the EPC Agreement in accordance with Prudent Operating Practices, including with respect to safety and security of the Project Site. Purchaser acknowledges that the EPC Contractor intends to have portions of the Work accomplished by Subcontractors qualified to perform such Work pursuant to written Subcontracts between the EPC Contractor and such Subcontractors. Purchaser acknowledges and agrees that it will not be entitled to be provided with a copy of, nor will it have any right to review, comment on, or approve, any such Subcontracts; provided, however, that Purchaser shall have the right to approve all Major Subcontractors, Major Equipment Suppliers, and all Major Subcontractor and Equipment Warranties that do not meet the Minimum Equipment Warranty Requirements (each as defined in the EPC Agreement) pursuant to Section 5.6.3.

5.11.2 Transmission Service Agreement. The Parties shall cooperate and work together in good faith to cause the Transmission Service Agreement, together with all exhibits and schedules attached thereto, to be executed on or before the start of the commissioning of the Project. Such documents shall conform specifically to the Project's details, including those that address issues relating to the Project Site, the Project Real Property Agreements, applicable Laws, and the Project Permits.

5.11.3 Long-Term Service Agreement. As of the Execution Date, the Parties shall enter into the LTSA in the form of Exhibit M, which shall be effective as of the Effective Date.

5.11.4 Equipment Warranty and Performance Guarantees Agreement. On or before the Firm Date, Seller shall enter into an Equipment Warranty and Performance Guarantees Agreement, which shall be fully assignable to Purchaser by its terms and shall be assigned by Seller to Purchaser upon Closing.

5.12 Interconnection Agreement and Purchaser Obligations.

5.12.1 Interconnection Agreement. [Add Interconnection Agreement requirements.]

5.12.2 Integration Obligations. [Add integration obligations specific to the Project.] Seller shall (a) cooperate in good faith with Purchaser in respect of such transmission service (other than the transmission service arrangements under the Firm Transmission Agreements and Transmission Service Agreement) and any other arrangements, and (b) respond to reasonable requests from Purchaser for input or information with respect of such activities.

5.13 Permits.

5.13.1 Permit Application Review. Seller shall provide Purchaser copies of applications for Permits ("Permit Applications") which have not been obtained prior to the Execution Date, and Permit Applications or other documents with respect to any proposed amendment, modification, or supplement of an issued Permit, prior to submission to the applicable Governmental Authority of such Permit Application. Purchaser shall have the right to review and approve any Permit Application that relates to any post-Closing obligations or restrictions. Purchaser shall cooperate and respond to any reasonable and timely request from Seller for input or information with respect to a Permit Application. After a Permit Application is in final form, Seller will seek confirmation from Purchaser that such Permit Application is approved and such approval will be deemed given if Purchaser does not respond within fifteen (15) Business Days of submission by Seller affirmatively indicating that such Permit Application is not approved with explanation of the basis for such determination in reasonable detail.

5.13.2 Final Permits. Seller shall provide Purchaser copies of all Permits issued to Seller or the Project after the Execution Date by the applicable Governmental Authority. Each such issued Permit will be deemed sufficient to satisfy the conditions set forth in Section 6.1.10 and Section 6.4.5 if it (a) is, or will be on the Firm Date or Closing Date, as applicable, valid, binding, or in full force and effect, (b) is not conditioned on any future payments after the Closing that are not Excluded Liabilities, and (c) does not restrict the use, performance, or output of the

Project as currently contemplated or has or would reasonably be expected to have an adverse and material effect on the capacity, availability, operations (including costs of operations), maintenance (including the cost of maintenance), reliability, schedule, or safety (including safety of construction) of the Project.

5.14 Completion Certificates; Final Completion.

5.14.1 Completion Certificates. In connection with the construction and commissioning of the Project, the Milestones, and Completion Certificates will be determined, completed, issued, and approved by the Licensed Professional Engineer, as provided in and in accordance with the EPC Agreement. Seller shall keep Purchaser apprised of the construction of the Project and achievement of Milestones and shall promptly make available to Purchaser copies of all Completion Certificates provided by the EPC Contractor under and in accordance with the Purchaser Access and Communications Protocol attached as Exhibit [XX] to the EPC Agreement.

5.14.2 Final Completion. From and after Closing, Purchaser shall provide Seller and its Affiliates and their respective Representatives non-exclusive rights of access, ingress, and egress to and from the Project Site at such times as may be reasonably required in connection with the performance of Seller's obligations pursuant to this Agreement and the EPC Agreement. Effective as of the Closing Date, Seller shall be designated by Purchaser to act as its agent under the EPC Agreement and in such capacity to manage the EPC Agreement with respect to the achievement of Final Completion. In furtherance of the foregoing, Purchaser shall grant to Seller the authority and right to assert and control (at the sole cost and expense of Seller) any claims that "Owner" may have against the EPC Contractor arising out of the EPC Agreement for matters related to the EPC Contractor's achievement of Final Completion, provided that Seller shall: (a) promptly notify Purchaser of such claim; (b) provide Purchaser from time to time with any information that Seller obtains with respect to any such claims; and (c) not assert, waive, or settle any such claim without the consent of Purchaser, such consent not to be unreasonably withheld, conditioned, or delayed. In the performance of its obligations pursuant to this Section 5.14.2, Seller shall cause the EPC Contractor to not directly or indirectly create, incur, assume, or suffer to be created by it or any of its Affiliates or any of their Representatives any Lien on the Project or Project Assets and shall cause the EPC Contractor to pay, discharge, and cause to be released of record any such Lien pursuant to and in accordance with the EPC Agreement. For the avoidance of doubt, in its representative capacity, Seller shall have no right to contractually modify the EPC Agreement or otherwise alter any of Purchaser's rights (including any rights of "Owner") thereunder.

5.15 Force Majeure, Purchaser Caused Delay; Scope Change under EPC Agreement.

5.15.1 Force Majeure. As a condition precedent to relief hereunder, Seller will give Purchaser written notice describing the particulars of the occurrence of any Force Majeure Event (together with reasonable supporting documentation, to the extent available) within ten (10) Business Days after Seller has knowledge, or reasonably should have knowledge, thereof. Subject to the foregoing, Seller and EPC Contractor (to the extent it is otherwise entitled to such relief under the EPC Agreement) shall be entitled to an extension of the Guaranteed Substantial Completion Date with respect to a Force Majeure Delay only in the event that more than fifteen (15) Lost Work Days in the aggregate have occurred. Seller shall take such actions as necessary

and in accordance with Prudent Operating Practices to avoid, mitigate, and minimize the impact of any Force Majeure Events and any delay to the Project Substantial Completion. Any extension of the Project Schedule due to a Force Majeure Delay will be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event. Seller shall continue to furnish timely regular written reports with respect thereto (together with reasonable supporting documentation of the anticipated impacts resulting from such Force Majeure Event, to the extent available) during the continuation of any such Force Majeure Event. Subject to the foregoing requirements, the Guaranteed Substantial Completion Date, Outside Firm Date and Outside Closing Date shall be extended on a day-for-day basis to the extent that Seller is entitled to schedule relief for Force Majeure Delay. Subject to the foregoing, in the event that Seller and EPC Contractor (to the extent it is otherwise entitled to such relief under the EPC Agreement) is entitled to an extension of the Guaranteed Substantial Completion Date with respect to the Force Majeure Event, Seller shall be entitled to an increase in the Purchase Price for any cost increases in EPC Contractor's direct costs to perform the Work (without markup for profit or indirect overheads) due to such Force Majeure Event and the effects thereof.

5.15.2 Purchaser Caused Delay. Seller and EPC Contractor (to the extent it is otherwise entitled to such relief under the EPC Agreement) shall be entitled to an extension of the Guaranteed Substantial Completion Date with respect to Purchaser Caused Delay only in the event that more than fifteen (15) Lost Work Days in the aggregate have occurred. Seller shall take such actions as necessary and in accordance with Prudent Operating Practices to avoid, mitigate, and minimize any delay due to Purchaser Caused Delay and any delay to the Project Substantial Completion. Any extension of the Project Schedule due to a Purchaser Caused Delay will be of no greater scope and of no longer duration than is reasonably required by the Purchaser Caused Delay Event. Subject to the foregoing requirements, the Guaranteed Substantial Completion Date, Outside Firm Date and Outside Closing Date shall be extended on a day-for-day basis to the extent that Seller is entitled to schedule relief for Purchaser Caused Delay. Subject to the foregoing, in the event that Seller is entitled to an extension of the Guaranteed Substantial Completion Date with respect to the Purchaser Caused Delay Event, Seller and EPC Contractor (to the extent it is otherwise entitled to such relief under the EPC Agreement) shall be entitled to an increase in the Purchase Price for any increase in EPC Contractor's direct costs to perform the Work (without markup for profit or indirect overheads) due to such Purchaser Caused Delay Event and the effects thereof.

5.15.3 Scope Change under EPC Agreement. If Seller is entitled to relief for a Force Majeure Delay as set forth in Section 5.15.1 or a Purchaser Caused Delay as set forth in Section 5.15.2, Seller shall notify Purchaser in writing and shall document such changes (including any proposed Scope Change under the EPC Agreement) that Seller deems necessary and its justification therefor. Purchaser shall reasonably review and consider such requested Scope Change and shall make a written response thereto. The Parties shall set forth the Scope Change in the Work and agreed upon amendments to the Agreement with respect to any such relief in a written Scope Change Order signed by the Parties substantially in the form of Exhibit H of the EPC Agreement.

5.16 Performance Security. No later than thirty (30) days after the Effective Date, Seller shall deliver to PGE the Seller's Letter of Credit and thereafter maintain it in full force and effect until the third (3rd) anniversary of the Closing Date. Unless otherwise agreed in writing by the

Parties, the Seller's Letter of Credit will be terminated, and Purchaser shall promptly return the same to Seller on the third (3rd) anniversary of the Closing Date. If this Agreement is terminated by either or both Parties pursuant to Section 7.1.1 (Mutual Consent), Section 7.1.2 (Law), Section 7.1.4 (Purchaser Material Breach), Section 7.1.6 (Firm Date) (if due solely to a Seller Non-Fault Event or a Purchaser Non-Fault Event), Section 7.1.7 (Closing Date) (if due solely to a Seller Non-Fault Event or a Purchaser Non-Fault Event), or Section 7.1.8 (Purchaser Bankruptcy), then Purchaser shall promptly return the Seller's Letter of Credit to Seller.

5.18 Licensed Professional Engineer. Seller and Purchaser will jointly engage the Licensed Professional Engineer to perform the services provided for in the scope of work set forth in the engagement agreement in substantially the form of Exhibit Q. All costs relating to the services of the Licensed Professional Engineer shall be shared equally by Purchaser and Seller. The Licensed Professional Engineer shall be chosen from the list of independent engineers provided in Schedule 5.10.5.

ARTICLE VI CONDITIONS TO CLOSING; CONDITIONS TO FIRM DATE

6.1 Purchaser's Conditions Precedent. The obligations of Purchaser hereunder to execute or deliver the items it is required to execute or deliver pursuant to Section 2.5.1 and to complete the Closing are subject to the fulfillment, at or before the Outside Closing Date, of each of the following conditions (all or any of which may be waived (if legally permissible) in whole or in part by Purchaser in its sole discretion):

6.1.1 Representations and Warranties. Each of the representations and warranties made by Seller in Article III are true and correct in all respects on and as of the Closing Date with the same force and effect as though made by Seller on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date in all material respects), except (a) to the extent that the failure of such representations and warranties (other than Fundamental Seller Representations) to be true and correct would not, individually or in the aggregate, have a Seller Material Adverse Effect, and (b) the Fundamental Seller Representations must be true and correct in all respects.

6.1.2 Performance. Seller has performed and complied in all material respects with the agreements, covenants, and obligations required by this Agreement to be so performed or complied with by Seller at or before the Closing.

6.1.3 Law. There is not in effect on the Closing Date any Law restraining, enjoining, or otherwise prohibiting or making illegal the Seller's consummation of the transactions contemplated by this Agreement.

6.1.4 Required Approvals. The Required Approvals have been duly obtained, made, or given and are in full force and effect; provided, however, that the absence of any rehearing or appeal and the expiration of any rehearing or appeal period with respect to any of the Required Approvals shall not be a requirement of this Closing Date Condition.

6.1.5 Seller's Consents. All of Seller's Consents necessary for the completion of the transactions contemplated by this Agreement to occur have been duly obtained, made, or given and are in full force and effect.

6.1.6 Deliveries. Seller has executed and delivered, or caused to be executed and delivered (as applicable), to Purchaser the items set forth in Section 2.5.2.

6.1.7 Status of the Project. The Project has achieved Project Substantial Completion.

6.1.8 Real Estate Matters.

(a) Title Curative Matters. Prior to the Closing Date, Seller has delivered to Purchaser true, correct, and complete copies of Curative Documents or other forms through which Seller has cured the Initial Title Objections and the Closing Date Title Objections in accordance with the standards and processes described in Section 5.4.1 and Section 5.4.2.

(b) Title Policy. Seller has caused the Title Company to issue to Purchaser the Title Policy.

(c) Closing Date Estoppels. Prior to the Closing Date, Seller shall have obtained and provided to Purchaser an estoppel certificate for each of the Project Real Property Agreements listed on Schedule 6.1.8(c) (the "Closing Date Estoppels"), which Closing Date Estoppels shall be substantially and in all material respects in the form of Exhibit I and shall be properly executed by the applicable landlord or grantor under the Project Real Property Agreements.

6.1.9 No Seller Material Adverse Effect. No Seller Material Adverse Effect exists as of the Closing Date.

6.1.10 Project Permits. The Project Permits required to be transferred to Purchaser as of Closing, or other Permits (other than the Purchaser's Consents and the Required Approvals) required to be issued to Purchaser as of the Closing, in each case, under applicable Law, shall have been so transferred or issued in accordance with applicable Law, and shall be valid and binding and in full force and effect.

6.1.11 Phase I ESA. Purchaser has received a Phase I Environmental Site Assessment ("ESA") for the Project Site, current and valid on the Closing Date under ASTM Standard Practice E1527-13 for ESAs, addressed to Purchaser as the user, or accompanied by a reliance letter in form and substance reasonably satisfactory to Purchaser.

6.1.12 Reports. Seller has delivered to Purchaser each of the Firm Date Reports and any Additional Reports in accordance with Section 5.10, and each such Firm Date Report or Additional Report satisfies or is deemed to satisfy the requirements of Section 5.10.2(a)-(c) in accordance with Section 5.10.

6.1.13 O&M Services. The Operator under the LTSA shall have mobilized to the Project Site and shall be ready to commence services.

6.2 Seller's Conditions Precedent. The obligations of Seller hereunder to execute or deliver the items it is required to execute or deliver pursuant to Section 2.5.2 and to complete the Closing are subject to the fulfillment, at or before the Outside Closing Date, of each of the following conditions (all or any of which may be waived (if legally permissible) in whole or in part by Seller in its sole discretion):

6.2.1 Representations and Warranties. Each of the representations and warranties made by Purchaser in Article IV are true and correct in all respects on and as of the Closing Date with the same force and effect as though made by Purchaser on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date in all material respects), except (a) to the extent that the failure of such representations and warranties (other than Fundamental Seller Representations) to be true and correct would not, individually or in the aggregate, have a Purchaser Material Adverse Effect, and (b) the Fundamental Purchaser Representations must be true and correct in all respects.

6.2.2 Performance. Purchaser has performed and complied in all material respects with the agreements, covenants, and obligations required by this Agreement to be so performed or complied with by Purchaser at or before the Closing.

6.2.3 Law. There is not in effect on the Closing Date any Law restraining, enjoining, or otherwise prohibiting or making illegal the Purchaser's consummation of the transactions contemplated by this Agreement.

6.2.4 Required Approvals. The Required Approvals have been duly obtained, made, or given and shall be in full force and effect.

6.2.5 Purchaser's Consents. All of the Purchaser's Consents have been duly obtained, made, or given and are in full force and effect.

6.2.6 Deliveries. Purchaser has (a) executed and delivered, or caused to be executed and delivered (as applicable) to Seller the items set forth in Section 2.5.1 and (b) paid the Closing Payment.

6.2.7 No Purchaser Material Adverse Effect. No Purchaser Material Adverse Effect exists as of the Closing Date.

6.2.8 Transmission Service Agreement. The Transmission Service Agreement has been executed by the parties thereto and is in full force and effect and Seller has obtained all required FERC approvals to be able to provide transmission service to Purchaser under the Transmission Service Agreement.

6.2.9 Reserved.

6.3 Firm Date Conditions of Purchaser and Seller. The occurrence of the Firm Date and the commencement of the Parties' respective agreements, covenants, and obligations under this Agreement to occur between the Firm Date and the Closing are subject to the fulfillment, on or prior to the Outside Firm Date, of each of the following conditions (all or any of which may be waived (if legally permissible) in whole or in part by each Party in its sole discretion):

6.3.1 Law. There is not in effect on the Firm Date any Law restraining, enjoining, or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement.

6.3.2 Certain Consents.

(a) FERC. If either Party has issued written notice pursuant to Section 5.2.1 that such FERC Consents are to be obtained prior to the Firm Date, such Consents have been duly obtained, made, or given and shall be in full force and effect.

(b) Firm Date Consents. All Firm Date Required Consents have been duly obtained, made, or given and are full force and effect.

6.4 Purchaser's Firm Date Conditions. The occurrence of the Firm Date and the commencement of Purchaser's agreements, covenants, and obligations under this Agreement to occur between the Firm Date and the Closing are subject to the fulfillment, on or prior to the Outside Firm Date, of each of the following conditions (all or any of which may be waived (if legally permissible) in whole or in part by Purchaser in its sole discretion):

6.4.1 Accuracy of Sellers' Representations and Warranties. Each of the representations and warranties made by Seller in Article III are true and correct in all respects on and as of the Firm Date with the same force and effect as though made by Seller on and as of the Firm Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date), except (a) to the extent that the failure of such representations and warranties (other than Fundamental Seller Representations) to be true and correct would not, individually or in the aggregate, have a Seller Material Adverse Effect, and (b) the Fundamental Seller Representations must be true and correct in all respects.

6.4.2 Performance. Seller has performed and complied in all material respects with the agreements, covenants, and obligations required by this Agreement to be so performed or complied with by Seller at or before the Firm Date.

6.4.3 No Seller Material Adverse Effect. No Seller Material Adverse Effect exists as of the Firm Date.

6.4.4 Seller Firm Date Certificate. Seller has delivered to Purchaser the Seller Firm Date Certificate in accordance with Section 6.7

6.4.5 Permits. Seller has obtained and provided to Purchaser all Firm Date Permits issued in the name of Seller or the Project, which are all in full force and effect, fully assignable and transferrable to Purchaser, and satisfy the requirements in Section 5.13.

6.4.6 Reports. Seller has delivered to Purchaser each of the Firm Date Reports, and any Additional Reports in accordance with Section 5.10, and each such Firm Date Report or Additional Report satisfies or is deemed to satisfy the requirements of Section 5.10.2(a)-(c) in accordance with Section 5.10.

6.4.7 EPC Agreement. The Seller has provided Purchaser with a fully executed EPC Agreement in the form of Exhibit E.

6.4.8 Notice to Proceed. Seller is ready to issue a full notice to proceed pursuant to the EPC Agreement.

6.4.9 Seller's Certificate. Seller has executed and delivered to Purchaser a certificate, dated as of the Firm Date, executed by an authorized officer of Seller, certifying as to the matters set forth in Section 6.4.1 and Section 6.4.2.

6.4.10 Real Estate Matters.

(a) Title Curative Matters. Seller has delivered to Purchaser] the Title Commitment(s) and ALTA Survey as required by Section 5.4.1.

(b) Project Site Plan. Prior to the Firm Date, Seller shall have delivered to Purchaser the Project Site Plan in accordance with Section 5.4.6 .

6.4.11 Seller's Letter of Credit. The Seller's Letter of Credit remains in full force and effect.

6.5 Seller's Firm Date Conditions. The occurrence of the Firm Date and the commencement of Seller's agreements, covenants, and obligations under this Agreement to occur between the Firm Date and the Closing are subject to the fulfillment, on or prior to the Outside Firm Date, of each of the following conditions (all or any of which may be waived (if legally permissible) in whole or in part by Seller in its sole discretion):

6.5.1 Accuracy of Purchaser's Representations and Warranties. Each of the representations and warranties made by Purchaser in Article IV is true and correct in all respects on and as of the Firm Date with the same force and effect as though made by Purchaser on and as of the Firm Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date), except (a) to the extent that the failure of such representations and warranties (other than Fundamental Seller Representations) to be true and correct would not, individually or in the aggregate, have a Purchaser Material Adverse Effect, and (b) the Fundamental Purchaser Representations must be true and correct in all respects.

6.5.2 Performance. Purchaser has performed and complied in all material respects with the agreements, covenants, and obligations required by this Agreement to be so performed or complied with by Purchaser at or before the Firm Date.

6.5.3 No Purchaser Material Adverse Effect. No Purchaser Material Adverse Effect exists as of the Firm Date.

6.5.4 Purchaser Firm Date Certificate. Purchaser has delivered to Seller the Purchaser Firm Date Certificate in accordance with Section 6.6.

6.5.5 Purchaser's Certificate. Purchaser has executed and delivered to Seller a certificate, dated as of the Firm Date, executed by an authorized officer of Purchaser, certifying as to the matters set forth in Section 6.5.1 and Section 6.5.2.

6.6 Purchaser Obligation to Deliver Purchaser Firm Date Certificate. Within five (5) Business Days following the satisfaction or waiver of the Firm Date Conditions set forth in Section 6.3 and Section 6.4, Purchaser shall deliver to Seller a copy of a certificate substantially and in all material respects in the form of Exhibit J-1 (the "Purchaser Firm Date Certificate") duly signed by an authorized officer of Purchaser. The provision by Purchaser to Seller of the Purchaser Firm Date Certificate will be evidence of Purchaser's acknowledgement of the satisfaction, or the waiver by Purchaser, of the Firm Date Conditions set forth in Section 6.3 and Section 6.4. Seller shall issue the full notice to proceed pursuant to the EPC Agreement within three (3) Business Days after receipt of the Purchaser Firm Date Certificate.

6.7 Seller Obligation to Deliver Seller Firm Date Certificate. Within five (5) Business Days following the satisfaction or waiver of the Firm Date Conditions set forth in Section 6.3 and Section 6.5, Seller shall deliver to Purchaser a copy of a certificate substantially and in all material respects in the form of Exhibit J-2 (the "Seller Firm Date Certificate") duly signed by an authorized officer of Seller. The provision by Seller to Purchaser of the Seller Firm Date Certificate will be evidence of Seller's acknowledgement of the satisfaction, or the waiver by Seller, of the Firm Date Conditions set forth in Section 6.3 and Section 6.5.

ARTICLE VII TERMINATION

7.1 Termination Prior to Closing. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, prior to the Closing:

7.1.1 Mutual Consent. By mutual written consent of the Parties;

7.1.2 Law. By Seller or Purchaser upon written notice to the other Party, in the event that any final and non-appealable Law becomes effective which restrains, enjoins, or otherwise prohibits or makes illegal the consummation of the transactions contemplated by this Agreement, provided that the Parties shall use Commercially Reasonable Efforts to appeal any such Law which is appealable and pursue such appeal; provided, however, that neither Party may terminate this Agreement pursuant to this Section 7.1.2 if such final and non-appealable Law resulted from such Party's failure to fulfill in any material respect any obligation, agreement, or covenant under this Agreement required to be fulfilled by such Party on or prior to the Closing Date;

7.1.3 Seller Material Breach; Seller Material Adverse Effect Update. By Purchaser upon written notice to Seller, if: (a) there has been a breach by Seller of any representation, warranty, obligation, covenant, or agreement contained in this Agreement or any Ancillary Agreement to which it is a party which would result in a failure of, or inability of Seller to satisfy, any condition set forth in Section 6.1, Section 6.3 or Section 6.4, including any failure of Seller to enforce applicable rights and remedies against the EPC Contractor under the EPC Agreement, and such breach has not been cured to Purchaser's reasonable satisfaction within sixty

(60) days following Seller's receipt of written notice of such breach, provided that such sixty (60)-day period will be extended if: (i) such breach is reasonably capable of cure before the Outside Closing Date and curing such breach reasonably requires more than sixty (60) days; and (ii) Seller commences such cure within such sixty (60)-day period and diligently prosecutes and completes such cure before the Outside Closing Date; or (b) an Update is delivered to Purchaser that individually or together with other Updates discloses one or more Disclosure Items that has had or would reasonably be expected to have a Seller Material Adverse Effect and Purchaser delivers written notice of termination to Seller;

7.1.4 Purchaser Material Breach. By Seller upon written notice to Purchaser, if there has been a breach by Purchaser of any representation, warranty, obligation, covenant, or agreement contained in this Agreement or any Ancillary Agreement to which it is a party which would result in a failure of, or inability of Purchaser to satisfy, any condition set forth in Section 6.2, Section 6.3, or Section 6.5, and such breach has not been cured to Seller's reasonable satisfaction within sixty (60) days following Purchaser's receipt of written notice of such breach, provided that such sixty (60)-day period shall be extended if: (a) such breach is reasonably capable of cure before the Outside Closing Date and curing such breach reasonably requires more than sixty (60) days; and (b) Purchaser commences such cure within such sixty (60)-day period and diligently prosecutes and completes such cure before the Outside Closing Date;

7.1.5 Liability Cap. By Seller or Purchaser pursuant to and in accordance with the provisions of Section 5.8.3;

7.1.6 Firm Date. At any time after the Outside Firm Date, by Purchaser or Seller, upon written notice to the other Party, if the Firm Date has not occurred by the Outside Firm Date; provided, however, that a Party may not terminate this Agreement pursuant to this Section 7.1.6 if the failure of the Firm Date Conditions to be fulfilled by the Outside Firm Date resulted from that Party's failure to fulfill in any material respect any obligation, agreement, or covenant under this Agreement required to be fulfilled by such Party on or prior to the Firm Date;

7.1.7 Closing Date. At any time after the Outside Closing Date, by Purchaser or Seller, upon written notice to the other Party, if the Closing has not occurred by the Outside Closing Date; provided, however, that a Party may not terminate this Agreement pursuant to this Section 7.1.7 if the failure of the Closing Date Conditions to be fulfilled by the Outside Closing Date resulted from that Party's failure to fulfill in any material respect any obligation, agreement, or covenant under this Agreement required to be fulfilled by such Party on or prior to the Closing Date;

7.1.8 Purchaser Bankruptcy. By Seller upon written notice to Purchaser, upon the Bankruptcy of Purchaser;

7.1.9 Seller Bankruptcy. By Purchaser upon written notice to Seller, upon the Bankruptcy of Seller;

7.1.10 Outside Effective Date. By Seller or Purchaser upon written notice to the other Party, if in the case Section 2.1.1(a) and (b), either Party fails to satisfy the requirements of Section 2.1.1(a) or (b), as applicable, on or before the Outside Effective Date;

7.1.11 Extended Force Majeure.

(a) By Seller upon written notice to Purchaser, if the EPC Agreement is terminated pursuant to Section 15.4 of the EPC Agreement due to the occurrence of a Force Majeure Event.

(b) If Seller exercises its right to terminate this Agreement pursuant to Section 7.1.11(a), then for a period of two (2) years from the effective date of such termination of this Agreement (the “ROFO Period”), Seller shall, not enter into any agreement to sell, assign or otherwise transfer the Project Assets or one hundred percent (100%) of the equity interests in Seller to any third party, unless Seller first provides Purchaser a right of first offer to acquire (i) one hundred percent (100%) of the equity interests in Seller, or (ii) all of Seller’s right, title, and interest in the Project Assets, as applicable, pursuant to a written notice (the “ROFO Notice”). If Purchaser submits an offer (a “ROFO Offer”) to Seller on or before the deadline for receiving such offer, then the Parties will thereafter negotiate in good faith on an exclusive basis for a period of ninety (90) days, or such longer period as may be agreed to by the Parties (the “ROFO Negotiation Period”), the terms and conditions for the purchase and sale of the Project Assets or equity interests, as applicable. If the Parties fail to enter into a binding written agreement within such time period, then Seller may thereafter sell, assign or otherwise transfer (i) one hundred percent (100%) of the equity interests in Seller, or (ii) the Project Assets, as applicable, to any third party and to enter into any agreements in connection therewith, provided that, for a period of one hundred eighty (180) days after the end of the ROFO Negotiation Period, Seller may only enter into such agreements if (a) the price paid and other consideration provided by the party acquiring the Project Assets or equity interests, as applicable, is equal to or greater than the price and other consideration set forth in Purchaser’s ROFO Offer (or the last price and consideration offered by Purchaser during the negotiations between the Parties) and (b) the other terms and conditions (taken as a whole) are not more favorable to the party acquiring the Project Assets or equity interests, as applicable, than those described in Purchaser’s ROFO Offer (or the last set of terms and conditions offered by Purchaser during the ROFO Negotiation Period); or

7.1.12 Letter of Credit Default. By Purchaser if Seller’s Letter of Credit is subject to a Letter of Credit Default, and Seller does not cure the Letter of Default by delivering to Purchaser a replacement Letter of Credit that satisfies the requirements of this Agreement within three (3) Business Days after the Letter of Credit Default occurs.

7.2 Effect of Termination or Breach Prior to Closing.

7.2.1 If this Agreement is validly terminated pursuant to Section 7.1, then all further obligations of the Parties under this Agreement shall be terminated without further liability of any Party to the other Party, except for the rights and obligations of the Parties in this Section 7.2.1, Section 5.16 (Performance Security), Section 5.6.5 (Risk of Loss; Indemnity), Article VIII (Indemnification), Section 10.2 (No Other Representations), Article XI (Dispute Resolution), Section 12.2 (Limitation of Liability), Section 12.4 (Representatives and Affiliates), Article XIII (Miscellaneous), and Article I with respect to the Rules of Interpretation and any defined terms contained in the surviving provisions, each of which shall continue to apply following any such termination. Notwithstanding anything to the contrary contained herein, except as expressly set forth herein, termination of this Agreement shall not release any Party from

any liability for any breach by such Party of the terms and provisions of this Agreement prior to such termination, and such other Party will be entitled to pursue any rights or remedies available at law or in equity.

7.2.2 If this Agreement is terminated by either or both Parties pursuant to Section 7.1.1 (Mutual Consent), Section 7.1.2 (Law), Section 7.1.6 (Firm Date) (only by Seller if due solely to a Seller Non-Fault Event, and only by Purchaser if due solely to a Purchaser Non-Fault Event), Section 7.1.7 (Closing Date) (only by Seller if due solely to a Seller Non-Fault Event, and only by Purchaser if due solely to a Purchaser Non-Fault Event), or Section 7.1.10 (Outside Effective Date), then both Parties shall be released from any liability to one another with respect to such termination; provided, that Seller shall be obligated to refund [Amount] percent ([XX%]) of such retained Milestone Payments to Purchaser if within two (2) years of such termination, Seller or any Affiliate is able to sell the Facility (via the sale of the Facility assets or the Facility owner or any special-purpose parent of such owner) or the Facility is able to achieve commercial operations and commence operations.

7.2.3 Termination Payments.

(a) Payment of Seller Default Termination Payment. If this Agreement is validly terminated by Seller pursuant to Section 7.1.11 (Extended Force Majeure), then Seller shall refund all Milestone Payments received as of the date of such termination, which amount shall not be subject to the Liability Cap. If this Agreement is validly terminated by Purchaser pursuant to Section 7.1.3 (Seller Material Breach; Seller Material Adverse Effect Update), Section 7.1.6 (Firm Date) (other than if due solely to a Seller Non-Fault Event), Section 7.1.7 (Closing Date) (other than if due solely to a Seller Non-Fault Event), Section 7.1.9 (Seller Bankruptcy), or Section 7.1.5 (Liability Cap), then Seller shall (A) refund all amounts previously paid by Purchaser to Seller hereunder, which amount shall not be subject to the Liability Cap, and (B) pay a termination payment to Purchaser, as liquidated damages, in an amount equal to [Amount] ([\$XXX]) per kW of the Planned Project Size reduced by Delay LDs (together (A) and (B), as applicable, the “Seller Default Termination Payment”). Seller shall pay to Purchaser the Seller Default Termination Payment promptly, and in any case not more than ten (10) Business Days after termination of this Agreement, in accordance with the terms of this Article VII. Purchaser shall be entitled to recover any Seller Default Termination Payment due under this Section 7.2.3(a) in any action at law or in equity, including under the Seller’s Letter of Credit and under other performance security required under Section 5.16.

(b) Payment of Purchaser Default Termination Payment. If this Agreement is validly terminated by Seller pursuant to Section 7.1.4 (Purchaser Material Breach), Section 7.1.6 (Firm Date) (other than if due solely to a Purchaser Non-Fault Event), Section 7.1.7 (Closing Date) (other than if due solely to a Purchaser Non-Fault Event), or Section 7.1.8 (Purchaser Bankruptcy), then Purchaser shall pay a termination payment to Seller, as liquidated damages, in an amount equal to (i) [Amount] ([\$XX]) per kW of the Planned Project Size less (ii) the total sum of all amounts paid by Purchaser hereunder (together (i) less (ii) the “Purchaser Default Termination Payment”). Purchaser shall pay to Seller the Purchaser Default Termination Payment, if positive, promptly, and in any case not more than ten (10) Business Days after termination of this Agreement in accordance with the terms of this Article VII. In the event that the Purchaser Default Termination Payment is a negative number, meaning that such amount is

due from Seller to Purchaser, Seller shall pay to Purchaser the Seller Default Termination Payment promptly, and in any case not more than ten (10) Business Days after termination of this Agreement in accordance with the terms of this Article VII. In addition, Purchaser shall offer Seller a power purchase agreement on the same terms as the Seller's Affiliate PPA.

(c) Nature of Termination Payments. The Parties acknowledge and agree that because of the unique nature of the Project and the unavailability of adequate substitutes, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Purchaser or Seller as a result of termination of this Agreement by the Parties as described in Section 7.2.3(a) and (b). It is understood and agreed by the Parties that: (i) Purchaser and Seller, respectively, will be disadvantaged by such termination; (ii) it is impracticable or extremely difficult to quantify the amount of damages that would arise in the event of a termination; (iii) any sums which would be payable under Section 7.2.3(a) and (b) are in the nature of liquidated damages, are fair and reasonable and do not constitute penalties; (iv) such payments represent a reasonable estimate of damages; and (v) such payments shall, without duplication, be the sole and exclusive remedy of Purchaser and Seller, respectively, with respect to any such terminations.

ARTICLE VIII INDEMNIFICATION

8.1 Indemnification by Seller. Subject to the limitations set forth in this Agreement, including Section 8.4 (Limitations of Liability), Section 8.5 (Certain Limitations), Section 10.1 (Survival), Section 10.2 (No Other Representations), and Article XII (Limited Remedies and Damages), if the Closing occurs (except with respect to Section 8.1.6 below), Seller agrees to indemnify Purchaser and its Related Persons (each, a "Purchaser Indemnified Party") for Losses incurred by any Purchaser Indemnified Party to the extent resulting from any of the following:

8.1.1 any breach or inaccuracy of a representation or warranty or other statement made by Seller in this Agreement or in any certification provided by Seller at Closing;

8.1.2 the breach by Seller of, or default in the performance by Seller of, any covenant, agreement, or obligation to be performed by Seller pursuant to this Agreement;

8.1.3 the Excluded Liabilities;

8.1.4 the Construction Costs;

8.1.5 any fraud, intentional misrepresentation, or willful misconduct by or gross negligence of Seller in connection with this Agreement or the transactions contemplated by this Agreement;

8.1.6 any Claims or Actions made by third parties (before, on, or after the Effective Date) against any Purchaser Indemnified Party arising from or as a result of the negligent acts or omissions of Seller or any of its Affiliates in connection with the development, design, construction, ownership, operation, or maintenance of the Project or the Project Assets; or

8.1.7 any (a) Seller Income Taxes or (b) Pre-Closing Taxes.

8.2 Indemnification by Purchaser. Subject to the limitations set forth in Section 8.4 (Limitations of Liability), Section 8.5 (Certain Limitations), Section 10.1 (Survival), Section 10.2 (No Other Representations), and Article XII (Limited Remedies and Damages), if the Closing occurs, Purchaser agrees to indemnify Seller and its Related Persons (each, a “Seller Indemnified Party”) from any and all Losses incurred by any Seller Indemnified Party to the extent resulting from any of the following:

8.2.1 any breach of a representation or warranty made by Purchaser in this Agreement;

8.2.2 the breach by Purchaser of, or default in the performance by Purchaser of, any covenant, agreement, or obligation to be performed by Purchaser pursuant to this Agreement;

8.2.3 the Assumed Liabilities;

8.2.4 any fraud, intentional misrepresentation, or willful misconduct by or gross negligence of Purchaser in connection with this Agreement or the transactions contemplated by this Agreement;

8.2.5 any Claims or Actions made by third parties (on or after the Closing Date) against any Seller Indemnified Party arising from or as a result of the acts or omissions of Purchaser or any of its Affiliates in connection with the ownership, operation, or maintenance of the Project or the Project Assets; or

8.2.6 any (a) Purchaser Taxes or (b) Post-Closing Taxes, in each case, other than Taxes that are allocated to or are otherwise the responsibility of Seller or its Affiliates under this Agreement.

8.3 Method of Asserting Claims.

8.3.1 Claim Notice. In the event that (a) a Party seeking indemnification (the “Indemnified Party”) becomes aware of the existence of any Claim for which indemnification may be sought under Section 8.1 or Section 8.2 (an “Indemnification Claim”), or (b) any legal proceedings shall be instituted, or any Claim shall be asserted, by any Person not a Party to, and not affiliated with any Party to, this Agreement with respect to an Indemnification Claim (a “Third Party Claim”), the Indemnified Party shall promptly cause written notice thereof (a “Claim Notice”) to be delivered to the Party from whom indemnification is sought (the “Indemnifying Party”); provided that, so long as such notice is given within the applicable time period described in Section 10.1, no delay on the part of the Indemnified Party in giving any such notice shall relieve the Indemnifying Party of any indemnification obligation hereunder unless (and then solely to the extent that) the Indemnifying Party is actually prejudiced by such delay. Each Claim Notice shall be in writing and (i) shall specify the basis for indemnification claimed by the Indemnified Party, including a reference to the provisions of this Agreement with respect to which such right of indemnification is claimed or arisen, (ii) if such Claim Notice is being given with respect to a Third Party Claim, shall describe in reasonable detail such Third Party Claim and shall be accompanied by copies of all relevant pleadings, demands, and other papers served on the Indemnified Party, and (iii) shall specify the amount of (or if not finally determined, a good faith estimate of) the

Losses being incurred by, or imposed upon, the Indemnified Party on account of the Indemnification Claim.

8.3.2 Third Party Claim Defense; Settlement. With respect to Third Party Claims, the Indemnifying Party shall have the right, at its sole option and expense, to be represented by counsel of its choice and to defend against, negotiate, settle, or otherwise handle any Indemnification Claim in accordance with this Agreement and if the Indemnifying Party elects to defend against, negotiate, settle, or otherwise handle any Indemnification Claim, it shall within thirty (30) days after receipt of the Claim Notice (or sooner, if the nature of the Indemnification Claim so requires) (the “Dispute Period”) notify the Indemnified Party of its intent to do so. If the Indemnifying Party does not elect within the Dispute Period to defend against, negotiate, settle, or otherwise handle any Indemnification Claim, the Indemnified Party may defend against, negotiate, settle, or otherwise handle such Indemnification Claim in accordance with this Agreement. If the Indemnifying Party elects to defend against, negotiate, settle with, or otherwise handle any Indemnification Claim, the Indemnified Party may participate, at its own expense, in the defense of such Indemnification Claim; provided, however, that such Indemnified Party shall be entitled to participate in any such defense with separate counsel reasonably acceptable to the Indemnifying Party, at the reasonable expense of the Indemnifying Party if (a) so requested by the Indemnifying Party to participate or, (b) in the reasonable opinion of counsel to the Indemnified Party, a conflict exists between the Indemnified Party and the counsel selected by the Indemnifying Party (so long as the Indemnified Party gives prompt written notice of such conflict to the Indemnifying Party and the opportunity to cure any such conflict); and provided, further, that the Indemnifying Party shall not be required to pay for more than one such counsel for all Indemnified Parties in connection with any Indemnification Claim. Seller, on the one hand, and Purchaser, on the other hand, agree to cooperate with each other in connection with the defense, negotiation, or settlement of any such Indemnification Claim, including providing information reasonably available to such Party and any assistance reasonably requested in order to ensure the proper and adequate defense of any such claim. Notwithstanding anything in this Section 8.3.2 to the contrary, the Indemnifying Party shall not, without the written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned, or delayed), settle or compromise any Indemnification Claim or permit a default or consent to entry of any judgment (each a “Settlement”) unless (i) the claimant and such Indemnifying Party provide to such Indemnified Party an unqualified release from the Indemnification Claim, including all Liability associated therewith, (ii) such Settlement does not contain any admission of fraud or wrongdoing on behalf of the Indemnified Party, and (iii) such Settlement does not impose any obligation on the Indemnified Party, other than financial obligations for which the Indemnified Party will be fully indemnified hereunder.

8.3.3 Indemnity Payment. After any final decision, judgment, or award shall have been rendered by a Governmental Authority of competent jurisdiction and the expiration of the time in which to appeal therefrom (if the Indemnifying Party is pursuing an appeal), or a Settlement or arbitration shall have been consummated, or the Indemnified Party and the Indemnifying Party shall have arrived at a mutually binding agreement with respect to an Indemnification Claim hereunder, the Indemnified Party shall forward to the Indemnifying Party notice of any sums due and owing by the Indemnifying Party pursuant to this Agreement with respect to such Indemnification Claim and the Indemnifying Party shall make prompt payment thereof pursuant to the terms hereof.

8.4 Limitations of Liability.

8.4.1 Claim Threshold. Notwithstanding anything to the contrary contained in this Agreement, (a) Seller shall not have liability for its indemnification obligations under Section 8.1.1 or Section 8.1.2 until the aggregate amount of all Losses incurred by the Purchaser Indemnified Parties that are subject to indemnification pursuant to Section 8.1.1 or Section 8.1.2 equals or exceeds [Amount] ([\$XXX]) (the “Claim Threshold”), in which event Seller shall become liable for the aggregate Losses under Section 8.1.1 or Section 8.1.2; it being understood and agreed that the Claim Threshold shall not apply to (i) claims based on fraud or willful misconduct, (ii) Third Party Claims, or (iii) claims for indemnification for breach of the Fundamental Seller Representations or the representations and warranties provided in Section 3.22 (Taxes), in each case for which Seller shall become liable for all such Losses, whether or not the Claim Threshold has been reached; and (b) Purchaser shall have no liability for its indemnification obligations under Section 8.2.1 or Section 8.2.2 until the aggregate amount of all Losses incurred by the Seller Indemnified Parties that are subject to indemnification pursuant to Section 8.2.1 or Section 8.2.2 equals or exceeds the Claim Threshold, in which event Purchaser shall become liable for the aggregate Losses under Section 8.2.1 or Section 8.2.2; it being understood and agreed that the foregoing Claim Threshold shall not apply to (A) claims based on fraud or willful misconduct, (B) Third Party Claims, (C) claims for indemnification for breach of the Fundamental Purchaser Representations, or (D) claims for indemnification for breach of Purchaser’s obligation to pay any portion of the Purchase Price due after the Closing Date, in each case for which Purchaser shall become liable for all such Losses, whether or not the Claim Threshold has been reached.

8.4.2 De minimis Claims. Seller shall have no liability pursuant to Section 8.1.1 in connection with any individual or group of claims that results in Losses to the Purchaser Indemnified Parties that are subject to indemnification pursuant to Section 8.1.1 in the aggregate of less than Amount ([\$XXX]), and such Losses below such amount shall not be applied towards the satisfaction of the Claim Threshold. Purchaser shall have no liability pursuant to Section 8.2.1 in connection with any individual or group of claims that results in Losses to the Seller Indemnified Parties that are subject to indemnification pursuant to Section 8.2.1 in the aggregate of less than [Amount] Dollars ([\$XXX]), and such Losses below such amount shall not be applied towards the satisfaction of the Claim Threshold.

8.4.3 Duplication of Claims. If any fact, circumstance, or condition forming a basis for a claim for indemnification under Section 8.1 or Section 8.2, as applicable, shall overlap with any fact, circumstance, condition, agreement, or event forming the basis of any other claim for indemnification under such section, there shall be no duplication in the calculation of the amount of the Losses.

8.4.4 Anti-Sandbagging.

(a) A Purchaser Indemnified Party’s right to indemnification pursuant to Section 8.1.1 with respect to a breach of a representation or warranty made by Seller in this Agreement will be deemed to have been waived solely to the extent that Seller can reasonably demonstrate that Purchaser had “actual knowledge” of such breach prior to the Closing. For purposes of demonstrating “actual knowledge” in accordance with the preceding sentence, Purchaser shall be deemed to have “actual knowledge” of a breach only if such breach is

reasonably apparent without due inquiry or investigation to the Persons listed on Schedule 8.4.4(a) from the materials (i) contained within the data room established by Purchaser and Seller with respect to the transactions contemplated by this Agreement or (ii) provided in writing to Purchaser after the Execution Date and prior to the Closing Date.

(b) A Seller Indemnified Party's right to indemnification pursuant to Section 8.2.1 with respect to a breach of a representation or warranty made by Purchaser in this Agreement will be deemed to have been waived solely to the extent that Purchaser can reasonably demonstrate that Seller had "actual knowledge" of such breach prior to the Closing. For purposes of demonstrating "actual knowledge" in accordance with the preceding sentence, Seller shall be deemed to have "actual knowledge" of a breach only if such breach is reasonably apparent without due inquiry or investigation to the Persons listed on Schedule 8.4.4(b) from the materials (i) contained within the data room established by Purchaser and Seller with respect to the transactions contemplated by this Agreement or (ii) provided in writing to Seller after the Execution Date and prior to the Closing Date.

8.5 Certain Limitations. An Indemnifying Party shall not be required to indemnify an Indemnified Party to the extent of any Losses that a court of competent jurisdiction shall have determined by final, non-appealable, judgment to have resulted from the fraud or willful misconduct of the Indemnified Party.

8.6 Determination of Losses. For purposes of this Article VIII, the amount of Losses arising out of any inaccuracy in or breach of any representations or warranties of Seller or Purchaser in Article III or Article IV shall be calculated as if the terms "material", "Seller Material Adverse Effect", and "Purchaser Material Adverse Effect" (and variations thereof) were omitted from such representations and warranties; provided that, and for the avoidance of doubt, such qualifiers shall be taken into account initially in determining whether a breach of any representations and warranties of Seller or Purchaser has occurred.

8.7 Mitigation.

8.7.1 Each Indemnified Party shall use its Commercially Reasonable Efforts to mitigate Losses for which indemnification may be sought pursuant to Section 8.1 or Section 8.2, as applicable.

8.7.2 The amount which an Indemnifying Party is or may be required to pay to an Indemnified Party with respect to Losses for which indemnification is provided under this Agreement shall be reduced by any amounts actually received (including amounts actually received under insurance policies, less any deductibles) by or on behalf of any Indemnified Party or its Affiliates from third parties (such amounts are collectively referred to herein as "Indemnity Reduction Amounts"). If an Indemnified Party receives any Indemnity Reduction Amounts with respect to a claim for which indemnification is provided under this Agreement after the full amount of such claim has been paid by an Indemnifying Party or after an Indemnifying Party has made a partial payment of such claim and such Indemnity Reduction Amounts exceed the remaining unpaid balance of such claim, then the Indemnified Party shall promptly remit to the Indemnifying Party an amount equal to the excess (if any) of (a) the amount theretofore paid by the Indemnifying Party with respect to such claim, less (b) the amount of the indemnity payment that would have

been due if such Indemnity Reduction Amounts in respect thereof had been received before the indemnity payment was made. An insurer or other third party who would otherwise be obligated to pay any claim will not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto, it being expressly understood and agreed that no insurer or any other third party shall be entitled to any benefit they would not be entitled to receive in the absence of the indemnification provisions by virtue of the indemnification provisions hereof.

8.7.3 Tax Benefits. Unless otherwise expressly provided in this Agreement, in determining the amount of any Loss with respect to which an amount may be payable to an Indemnified Party pursuant to this Article VIII, there shall be taken into account the amount of any income Tax benefit, if any, realized as a result of such Loss.

ARTICLE IX TAX MATTERS

9.1 Cooperation. After the Closing Date, Seller and Purchaser shall (and shall cause their respective Affiliates to): (a) assist the other Party in preparing any Tax Returns which such other Party is responsible for preparing and filing in accordance with the terms of this Agreement, (b) cooperate fully in preparing for any audits of, or disputes with any Taxing Authority regarding, any Tax Returns of Seller or Purchaser with respect to the Project or the Project Assets, and (c) make available to each other as reasonably requested all information, records, or documents relating to Liability or potential Liability for Pre-Closing Taxes and Overlap Period Taxes and will preserve such information, records, or documents until thirty (30) days after the expiration of the applicable statute of limitations (including extensions or waivers thereof) with respect to the particular Tax to which the information, records, or documents relate.

9.2 Inflation Reduction Act.

9.2.1 Seller shall ensure that any Laborers and Mechanics that perform any portion of the Work that constitutes Construction or Repair or Alteration are paid wages at rates not less than the prevailing rates for work of a similar character in the locality where such Construction or Repair or Alteration is performed, as most recently determined by the Secretary of Labor at the time of the relevant Work, in accordance with subchapter IV of chapter 31 of title 40, United States Code.

9.2.2 Except as provided in this Section 9.2.2, Seller shall ensure that the percentage of the total Labor hours incurred in connection with any portion of the Work that constitutes Construction or Repair or Alteration and that is performed by Qualified Apprentices is at least equal to that percentage set forth in that subsection of Code Section 45(b)(8)(A)(ii) applicable to the year in which the Project begins construction for purposes of Code Section 48. Seller shall employ, and shall ensure that any Tax Subcontractor that employs four or more individuals in connection with such Construction employs, one or more Qualified Apprentices. Seller shall, and shall cause all Tax Subcontractors to retain books and records sufficient to demonstrate compliance with the foregoing. In the event that Seller or any Tax Subcontractor is not able to provide such written documentation, Seller shall be deemed to have satisfied the responsibility set forth in this Section 9.2.2 to the extent that Seller provides written documentation

demonstrating to Owner's reasonable satisfaction (i) that Seller or any such Tax Subcontractor requested Qualified Apprentices from a Registered Apprenticeship Program, and (ii) either (I) such request was denied for reasons other than the failure of Seller or such Tax Subcontractor to comply with the established standards and requirements of such Registered Apprenticeship Program, or (II) such Registered Apprenticeship Program failed to respond to such request within five (5) Business Days.

9.2.3 Seller acknowledges that the requirements of Section 9.2.1 and Section 9.2.2 are based on Applicable Law as of the date of this Agreement and are essential to the qualification of the Project for the Investment Tax Credit. Should new or different requirements be promulgated under PWA Guidance, then such PWA Guidance requirements will be reflected in a Change Order.

9.2.4 Seller shall, and shall cause all Tax Subcontractors to retain for at least 10 years books and records for the purpose of demonstrating compliance with Seller's responsibilities set forth in Sections 9.2.1 and 9.2.2, and that such books and records shall be maintained in accordance with Code Section 6001. Notwithstanding anything to the contrary, Seller shall retain through the statute of limitations period applicable to the Investment Tax Credit, plus ninety (90) days, (A) a copy of all contracts by and between Seller and any Tax Subcontractor, including, for avoidance of doubt, in connection with work performed by Seller or any Tax Subcontractor engaged by Seller pursuant to Seller's Warranty, (B) any documentation provided to Seller by a Tax Subcontractor for the purpose of demonstrating compliance by such Tax Subcontractor with the responsibilities set forth in Sections 9.2.1 and 9.2.2, and (C) any additional books and records necessary to meet the requirements of Code Section 6001 for the purpose of demonstrating compliance by Seller and any Tax Subcontractors with the representations set forth in Sections 9.2.1 and 9.2.2.

9.2.5 Seller shall ensure that the Project meets the Domestic Content Requirements.

9.2.6 Seller shall cooperate with Owner in the provision or filing with the IRS of information, registration or other requirements associated with the satisfaction of the Prevailing Wage and Apprenticeship Requirements, Domestic Content Requirements, and section 6417 or 6418 of the Code.

9.2.7 Seller shall provide an officer's certification in form and substance materially identical to that set forth in Exhibit T ("**PWA Requirements Certificate**") together with the Substantial Completion Certificate. Seller shall include with the PWA Requirements Certificate (A) a copy of all relevant provisions of any Subcontract that requires a Tax Subcontractor to comply with the Prevailing Wage and Apprenticeship Requirements and (B) the certification of any Tax Subcontractor that such Tax Subcontractor has complied with the Prevailing Wage and Apprenticeship Requirements, in each case in form and substance materially similar to the PWA Requirements Certificate.

9.2.8 In the event any additional Work that constitutes Construction or Repair or Alteration occurs after Substantial Completion or through the date on which Final Completion

occurs, Seller shall provide an amended PWA Requirements Certificate that also reflects such Work.

9.2.9 No later than the last day of each calendar quarter following NTP, Seller shall provide written documentation demonstrating compliance with Section 9.2.1 and Section 9.2.2.

9.2.10 Seller shall cooperate with Owner's reasonable requests for information and documentation concerning compliance by Seller and all Tax Subcontractors with the Prevailing Wage and Apprenticeship Requirements and Domestic Content Requirements, which cooperation shall extend to reasonable attempts to obtain such cooperation from any Tax Subcontractors.

9.2.11 Seller shall provide commercially reasonable support and cooperate with Owner in connection with any tax proceeding regarding the Project's compliance with Code Sections 45, 45Y, 48, and 48E, as applicable (each, a "Tax Contest"). In connection with any such tax proceeding concerning the Prevailing Wage and Apprenticeship Requirements or the Domestic Content Bonus Requirements, Owner shall timely notify Seller of such audit or examination. Owner's failure to timely notify Seller of Tax Contest or any proceeding with respect to such Tax Contest shall not relieve Seller of its obligations hereunder. Owner shall keep Seller reasonably informed of the proceedings of any Tax Contest, shall provide Seller with any written submissions in connection therewith that are relevant to matters for which Seller may have an indemnification obligation under this Agreement and consider in good faith comments that Seller provides prior to the due date for any such submission prior to submission, and (provided that Seller has acknowledged in writing its obligation to indemnify Owner) shall not agree to a settlement of such Tax Contest without Seller's written consent, not to be unreasonably withheld, conditioned, or delayed.

9.2.12 This Section 9.2 shall survive the expiration or earlier termination of this Agreement.

9.3 Tax Contests. Purchaser shall control, in its sole discretion, any Tax audit, litigation, or other proceeding with respect to any income Taxes of Purchaser with respect to the Project, unless such audit, litigation, or proceeding involves a claim made or proposed by the IRS that, if successful, would result in a Loss for which Seller may be required to indemnify Purchaser pursuant to this Agreement, in which case, Seller shall, at its own expense, control the defense and settlement of the applicable proceeding, including the content of all communications with Tax authorities.

9.4 Adjustments to Purchase Price. The Parties hereby agree that any and all indemnity payments made pursuant to this Agreement shall, to the maximum extent permitted by applicable Law, be treated for all Tax purposes as an adjustment to the Purchase Price.

ARTICLE X SURVIVAL PERIODS; NO OTHER REPRESENTATIONS

10.1 Survival of Representations, Warranties, Covenants, and Agreements. All representations and warranties contained in this Agreement shall survive, until the day that is three (3) years after the Closing Date; provided, however, that: (a) the Fundamental Seller

Representations and the Fundamental Purchaser Representations shall survive indefinitely after the Closing Date; (b) the representations and warranties contained in Section 3.15 (Environmental Matters) shall survive until the day that is sixty (60) months after the Closing Date; and (c) the representations and warranties in Section 3.22 (Taxes) shall survive until the expiration of the applicable statute of limitations (giving effect to any extensions or waivers thereof). The covenants and agreements contained in this Agreement shall survive, (i) with respect to those covenants which by their nature are required to be performed at or prior to the Closing (other than covenants set forth in Article IX with respect to Taxes or the covenants set forth in Section 5.6.5), until the day that is eighteen (18) months following the Closing Date and, (ii) with respect to those covenants which by their nature are required to be performed following the Closing Date (other than covenants set forth in Article IX with respect to Taxes or the covenants set forth in Section 5.6.5), until one hundred eighty (180) days after the earlier of (x) the period explicitly set forth therein or (y) the last date on which the applicable covenant was required to be fully performed; provided, however, that the covenants and agreements contained in: (A) Article IX (Tax Matters) with respect to Taxes shall survive until the expiration of the statute of limitations applicable to such Taxes (giving effect to any extensions or waivers thereof); (B) Section 13.6 (Confidentiality) shall be governed solely by the terms therein; and (C) Section 5.6 (Purchaser's Inspection Right) shall survive until the day that is thirty-six (36) months after the Closing Date. The indemnity obligations set forth in Section 8.1.5, Section 8.1.6, Section 8.2.4, and Section 8.2.5 shall survive indefinitely after the Closing Date.

10.2 No Other Representations.

10.2.1 Notwithstanding anything in this Agreement to the contrary, it is the explicit intent of each Party hereto, and the Parties hereby agree, that none of the Parties nor any of their Related Persons nor any of their Representatives has made or is making, and neither Party has relied upon, any representation or warranty whatsoever, express or implied, written or oral, including as to the condition, merchantability, value, quality, usage, suitability, or fitness for any particular purpose, apparent or latent defects of any type, or risk or other incidents of the business, the Project, the Project Site, the Project Assets, the Assumed Liabilities, or any part thereof, or with respect to the accuracy or completeness of any other information provided or otherwise furnished by either Party to the other Party, its Related Persons or its or their Representatives, except those express representations and warranties contained in Article III and Article IV, as applicable to a Party, and any other representations or warranties are expressly disclaimed. In particular, and without in any way limiting the foregoing, Seller makes no representation or warranty to Purchaser with respect to the prospects, any financial projections, or forecasts relating to the Project or the Project Assets, and any such representations or warranties are expressly disclaimed. Notwithstanding the foregoing, nothing in this Section 10.2.1 shall limit the express representations and warranties of Seller contained in Article III.

10.2.2 Except for those express representations and warranties contained in Article III, the Project Assets are being transferred "as is, where is, with all faults."

ARTICLE XI DISPUTE RESOLUTION

11.1 Dispute Resolution. If any dispute or claim arises under this Agreement which is not resolved in the ordinary course of business, the Party raising such dispute shall notify, in writing, the other Party of the dispute, which notification must include a written explanation of the dispute and the material details of the notifying Party's position as to the dispute. Upon issuance of such dispute notification, each Party shall nominate a senior executive (President or a Vice President) with authority to decide or resolve the matter in dispute and provide notice thereof to the other Party within five (5) Business Days of issuance of such dispute notification. Such senior executives shall meet within ten (10) Business Days of issuance of such dispute notification and in good faith attempt to resolve the dispute within ten (10) Business Days thereafter, and to produce written terms of settlement for the dispute (a "Settlement Agreement"). If the senior executives are unable to resolve a dispute pursuant to this Section 11.1, and to produce a Settlement Agreement within thirty (30) days after the date of their first meeting, then any Party may exercise any right or remedy available under this Agreement or applicable Law.

11.2 Governing Law. This Agreement and the rights and obligations of the Parties hereunder and the transactions contemplated hereby shall be governed by, enforced under, and interpreted in accordance with the Laws of the State of Oregon, without regard to principles of conflicts of law that would apply the Laws of another jurisdiction.

11.3 Exclusive Jurisdiction. Each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Federal courts located in Multnomah County, Oregon (or if such Federal court refuses jurisdiction, the state courts located in Multnomah County, Oregon) with respect to any action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding in any such court or that any such suit, action, or proceeding that is brought in any such court has been brought in an inconvenient forum. During the period a legal dispute that is filed in accordance with this Section 11.3 is pending before a court, all actions, suits, or proceedings with respect to such legal dispute or any other legal dispute, including any counterclaim, cross-claim, or interpleader, will be subject to the exclusive jurisdiction of such court. Each Party hereby waives the defense, and shall not assert as a defense in any legal dispute, that (a) such Party is not subject thereto, (b) such action, suit, or proceeding may not be brought or is not maintainable in such court, (c) such Party's property is exempt or immune from execution, (d) such action, suit, or proceeding is brought in an inconvenient forum, or (e) the venue of such action, suit, or proceeding is improper. A final judgment in any action, suit, or proceeding described in this Section 11.3 following the expiration of any period permitted for appeal and subject to any stay during appeal will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

11.4 Waiver of Trial by Jury. To the fullest extent permitted by Law, each of the Parties waives any right it may have to a trial by jury with respect to litigation directly or indirectly arising out of, under, or in connection with this Agreement. Each Party further waives any right to consolidate any Claim or Action in which a jury trial has been waived with any other Claim or Action in which a jury trial cannot be or has not been waived. This provision is a material

inducement for the Parties to enter into this Agreement, and will survive the Closing of this Agreement.

ARTICLE XII LIMITED REMEDIES AND DAMAGES

12.1 Exclusive Remedies From and after Closing, and except with respect to injunctive or equitable relief available to the Parties hereunder, or with respect to claims for fraud or willful misconduct with respect to a Party in connection with the transactions contemplated by this Agreement, the Parties acknowledge and agree that the indemnification provisions set forth in Article VIII and Section 5.6.5 are the sole and exclusive remedy for a Party with respect to the transactions contemplated by this Agreement, whether based on statute, in tort, common law, strict liability, contract, or otherwise, and all other remedies or damages at Law or in equity are hereby waived by each Party. For the avoidance of doubt, neither this Section 12.1 nor Article VIII (Indemnification) shall in any way impair or preclude a Party's right to terminate this Agreement pursuant to Article VII (Termination), or in any way impair or diminish any payments due and owing to Purchaser hereunder, thereunder, or with respect to Seller's Letter of Credit.

12.2 Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, no Party nor its Related Persons nor its or their Representatives will, under any circumstances, be liable for special, indirect, consequential, incidental, punitive, or exemplary damages, lost profits, or loss of revenue, diminution in value, or loss of business reputation or opportunity of any other Person or such Person's Related Persons or Representatives, whether based in statute, tort, common law, strict liability, contract, or otherwise ("Non-Reimbursable Damages"). The limitations herein imposed on remedies, the measure of damages, and the determination of Non-Reimbursable Damages shall be without regard to the cause or causes related thereto, including the negligence, gross negligence, strict liability, or other fault of any Party, its Related Persons, and its or their Representatives, and whether liability is based on contract, tort, statute, common law, strict liability, or otherwise; provided that, Non-Reimbursable Damages shall not include (a) Third Party Claims or (b) any payments or funds which any Party has expressly promised to pay or deliver to any other Party, including the Delay LDs, the Seller Default Termination Payment, and the Purchaser Default Termination Payment.

12.3 Liability Cap Amount. In no event will Seller's aggregate liability to Purchaser under this Agreement for the payment of Delay LDs exceed [Amount] percent ([XX%]) of the Purchase Price (the "Delay LD Cap"). In no event will Seller's aggregate liability to Purchaser under this Agreement, including under Article VIII, exceed [Amount] percent ([XX%]) of the Purchase Price (the "Liability Cap"), it being understood and agreed that the foregoing limitation shall not apply to (a) Seller's liability for claims based on fraud, intentional misrepresentation, gross negligence, or willful misconduct committed by Seller or its Related Persons, (b) Third Party Claims, or (c) claims for indemnification for breach of the Fundamental Seller Representations or the representations and warranties provided in Section 3.22 (Taxes); provided that any such excluded indemnifiable Losses shall not be deemed to count against or otherwise reduce such limitation on Seller's aggregate liability. In no event will Purchaser's aggregate liability to Seller under this Agreement, including under Article VIII, exceed the Liability Cap, it being understood and agreed that the foregoing limitation shall not apply to (i) claims based on fraud, intentional misrepresentation, gross negligence, or willful misconduct committed by Purchaser or its Related

Persons, (ii) Third Party Claims, (iii) claims for indemnification for breach of the Fundamental Purchaser Representations, or (iv) claims for breach of Purchaser's obligation to pay any portion of the Purchase Price due after the Closing Date, provided that any such excluded indemnifiable Losses shall not be deemed to count against or otherwise reduce such limitation on such Purchaser's aggregate liability.

12.4 Representatives and Affiliates. Notwithstanding anything in this Agreement to the contrary, no Related Person nor Representative of Seller shall have any personal liability to Purchaser or any other Person as a result of this Agreement or the breach of any representation, warranty, obligation, covenant, or agreement of Seller in this Agreement, and no Related Person nor Representative of Purchaser shall have any personal liability to Seller or any other Person as a result of this Agreement or the breach of any representation, warranty, obligation, covenant, or agreement of Purchaser in this Agreement; provided, however, that nothing in this Section 12.4 shall limit the EPC Contractor's liability to Purchaser under the EPC Agreement after the Closing Date.

ARTICLE XIII MISCELLANEOUS

13.1 Notices.

13.1.1 Notice Addresses. Unless this Agreement specifically requires otherwise, any notice, demand, or request provided for in this Agreement, or served, given, or made in connection with it, shall be in writing and shall be deemed properly served, given, or made if delivered in person by email (subject to the requirements in Section 13.1.2 with respect to Material Notifications), registered or certified mail, postage prepaid, or a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to a Party at its address specified below.

If to Purchaser, to:

With respect to any Material Notification (as defined below):

Portland General Electric Company
121 SW Salmon St.
1 WTC 1700
Portland, Oregon 97204-9951
Attention: Angelica Espinosa VP, General Counsel
Telephone: 503-464-7731
Email: lglrecp@pgn.com

with a copy to (which will not constitute notice):

Portland General Electric Company
121 SW Salmon St.
3WTCBR09
Portland, Oregon 97204-9951
Attention: Mike Abel
Email: mike.abel@pgn.com

Portland General Electric Company
121 SW Salmon St.
1 WTC 1700
Portland, Oregon 97204-9951
Attention: Brett Sims
Telephone: 503-464-7255
Email: brett.sims@pgn.com

With respect to all other communications under this Agreement:

Portland General Electric Company
121 SW Salmon St.
3WTCBR09
Portland, Oregon 97204-9951
Attention: Ezra Richards
Telephone: 503-464-8855
Email: ezra.richards@pgn.com

Portland General Electric Company
121 SW Salmon St.
3WTCBR09
Portland, Oregon 97204-9951
Attention: Mike Abel
Email: mike.abel@pgn.com

If to Seller:

With respect to any Material Notification (as defined below):

[Seller's Name]

Attention: General Counsel
Telephone:
Fax:
Email:

with a copy to (which will not constitute notice):

[Seller's Name]
Attention:
Telephone:
Fax: N/A
Email:

With respect to Title Objection Letters only:

[Seller's Name]
Attention:
Telephone:
Fax:
Email:]

With respect to all other communications under this Agreement:

[Seller's Name]
Attention:
Phone:
Fax:
Email:

13.1.2 Effective Time. Notice given by personal delivery, mail, or overnight courier pursuant to this Section 13.1.2 shall be effective upon physical receipt. Notice given by email pursuant to this Section 13.1.2 shall be effective as of (a) the date of confirmed delivery if delivered before 5:00 p.m. local prevailing time on any Business Day, or (b) the next succeeding Business Day if confirmed delivery is after 5:00 p.m. local prevailing time on any Business Day or during any non-Business Day; provided that, any email delivery must read at the beginning of the subject line thereto “[Seller Name] - BTA NOTICE”; provided further that, any Material Notification, will not be deemed delivered in accordance herewith, unless a complete copy thereof (with all attachments thereto) is actually received by the applicable Party by mail or courier on the next Business Day (and if such copy is not timely received, then such notice will be deemed to have been effective as of the date such copy was delivered and effective by mail or courier in accordance with this Section 13.1.2).

13.2 Payments. Except for payments due at Closing, including the Closing Payment, if a Party is required to make any payment under this Agreement on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

13.3 Entire Agreement. This Agreement and the Ancillary Agreements, including, in each case, all schedules and exhibits thereto, supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof and thereof, and contain the sole and entire agreement between the Parties hereto with respect to the subject matter hereof and thereof. In the event of a conflict between this Agreement and the Ancillary Agreements, the terms of this

Agreement shall control. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

13.4 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are completed, each Party will pay its own costs and expenses incurred in connection with the negotiation, execution, and performance under this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby.

13.5 Public Announcements. Prior to the Closing, the timing, manner, and content of all public announcements or other general public communications by either Party in relation to this Agreement and the purchase or sale of the Project Assets shall be fully discussed in advance between, and approved in writing by, Seller and Purchaser; provided that either Party may make any public disclosure it believes in good faith and upon advice of counsel is required by applicable Law or regulation or stock exchange rule, without the consent of (but, if not prohibited by law, with notice to) the other Party. After the Closing, Seller shall not make any public announcements in relation to this Agreement or the purchase and sale of the Project Assets without Purchaser's prior written approval, not to be unreasonably withheld.

13.6 Confidentiality.

13.6.1 Confidential Information. "Confidential Information" means: all confidential, proprietary, and trade secret information, ideas, and materials of or about a disclosing Party or its Affiliates, employees, contractors, or customers that is furnished after the Effective Date and labeled "confidential" or "proprietary" (or, if presented orally, is stated at the time to be confidential or is identified as being "confidential" or "proprietary" in a letter sent to the receiving Party no later than five (5) days after the disclosure). If labeled or identified as such, Confidential Information includes: (a) information, ideas, or materials of a technical nature such as research and development results, designs and specifications, and other materials and concepts relating to the products and processes of the disclosing Party and its Affiliates, and (b) information, ideas, or materials of a business nature such as non-public financial information; information regarding costs, profits, products, marketing, customers, suppliers, employees, and salaries; marketing and sale plans and forecasts; business and financial plans and forecasts; and power project development plans and opportunities.

13.6.2 Exclusions. Notwithstanding the foregoing, Confidential Information shall not include information (a) that was publicly available at the time of the disclosure thereof by one Party to the other; (b) that becomes publicly available other than through actions of the receiving Party or any of its Representatives in violation of this Agreement; (c) that was in the possession of the receiving Party (without confidential or proprietary restriction) at the time of disclosure or that becomes available to the receiving Party from a source not subject to any obligation to keep such information confidential; or (d) that was independently developed by a Party or Party's Representatives without the use or knowledge of any Confidential Information provided pursuant to this Agreement.

13.6.3 Restrictions on Use and Disclosure. Unless and until it receives the prior written consent of the disclosing Party, and except to the extent necessary under Section 13.6.4, the receiving Party agrees (a) to hold all Confidential Information of the disclosing Party in strict

confidence; (b) not to publish or otherwise disclose to any person or entity any Confidential Information of the disclosing Party; and (c) not to use, copy, reproduce, photograph, or otherwise make any image of the Confidential Information of the disclosing Party for any purpose except in connection with the consideration of the Project. The Parties understand that these prohibitions on use or disclosure generally prevent each Party from discussing Confidential Information of the disclosing Party, even in general terms, with Persons other than its Representatives.

13.6.4 Compelled Disclosure.

(a) If a receiving Party or its Representatives is requested or required to disclose Confidential Information provided under this Agreement by subpoena; or by other directive of a court, arbitration panel, or Governmental Authority; or as required by applicable Law, as the receiving Party shall determine, the receiving Party shall use Commercially Reasonable Efforts to avoid disclosure of such information, and prior to any disclosure, will provide the disclosing Party with prompt notice of such request or requirement in order to enable the disclosing Party to: (i) seek an appropriate protective order or other remedy at its own expense; (ii) consult with the receiving Party with respect to taking steps to resist or narrow the scope of such request or legal process; or (iii) waive compliance, in whole or in part, with the terms of this Section 13.6.

(b) In the event that such protective order or other remedy is not obtained, or that the disclosing Party waives compliance with the provisions hereof, the receiving Party agrees to furnish only that portion of information so provided under this Agreement which the receiving Party determines is legally required to be provided, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such information.

13.6.5 Permitted Disclosures. Notwithstanding the restrictions set forth in Section 13.6.3, each Party may disclose Confidential Information received by it to its Representatives, who need to know such Confidential Information for the purpose of such Party's evaluation of the Project; provided that the receiving Party informs each such Person who has access to the Confidential Information of its confidential nature, the terms of this Section 13.6, and that such terms apply to them. The Party receiving Confidential Information shall use reasonable efforts to ensure that each Representative complies with the terms of this Section 13.6, and that any Confidential Information received by such Representative is kept confidential. The receiving Party hereby represents and warrants in favor of the disclosing Party that it maintains, and will maintain during the term of this Agreement, procedures that are reasonably designed to promote compliance with its confidentiality obligations hereunder. Notwithstanding anything to the contrary contain in this Agreement, Purchaser may disclose Confidential Information to the OPUC in connection with any request for proposals or regulatory proceeding; provided, however, Purchaser shall use Commercially Reasonable Efforts to seek and obtain a protective order from the OPUC in connection with such disclosure of Confidential Information, and, if, to Purchaser's actual knowledge, the OPUC plans to disclose any Confidential Information without the protection of a protective order, Purchaser shall give prompt notice to Seller of such possible disclosure and shall provide reasonable assistance to Seller in its efforts to oppose such disclosure.

13.6.6 Confidentiality Term. The rights and obligations set forth in this Section 13.6 shall terminate three (3) years after the date of this Agreement, unless the Party

disclosing the Confidential Information specifically agrees in writing to release all or part of the Confidential Information from the confidential restrictions imposed by this Section 13.6 at an earlier date.

13.6.7 Confidentiality Remedies. Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Section 13.6 could cause the other Party or its Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall be entitled to seek injunctive relief to the extent allowed by law to prevent breaches of this Section 13.6 and to specifically enforce the terms and provisions hereof. Nothing in this Agreement shall be construed as a representation that a Party will not develop or acquire information that is the same as or similar to Confidential Information provided by another Party; provided that the Party does not do so in breach of this Section 13.6.

13.7 Waivers.

13.7.1 Grant of Waivers. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

13.7.2 Exercise of Remedies. No failure or delay of any Party, in any one or more instances, (a) in exercising any power, right, or remedy (other than failure or unreasonable delay in giving notice of default) under this Agreement or (b) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations, or agreements under this Agreement, shall operate as a waiver, discharge, or invalidation thereof, nor shall any single or partial exercise of any such right, power, or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power, or remedy, or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power, or remedy. Subject to Section 10.1, the covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act, or omission.

13.8 Amendment. This Agreement may be amended, supplemented, or modified only by a written instrument duly executed by the Parties.

13.9 No Construction Against Drafting Party. The language used in this Agreement is the product of the Parties' efforts and each Party hereby irrevocably waives the benefits of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific words in a contract.

13.10 No Third Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of each Party hereto and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any

other Person; provided that, Seller Indemnified Parties and Purchaser Indemnified Parties shall be third-party beneficiaries of this Agreement solely with respect to their rights to seek indemnification pursuant to Article VIII.

13.11 Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

13.12 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future Law, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom, and (d) Purchaser and Seller shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

13.13 Assignment. Neither this Agreement nor any of the rights or obligations hereunder shall be assigned by either Party, including by operation of Law, without the prior written consent of the other Party. A Change of Control of Seller will be deemed an assignment of this Agreement by Seller and shall require the prior written consent of Purchaser, provided that Seller shall be permitted to collaterally assign this Agreement in connection with any financing by Seller or any of its Affiliates in accordance with the Purchaser's consent, which shall not be unreasonably withheld, and any other terms that are agreed upon in the form of consent. Any consent required from a Party under this Section 13.13 shall not be unreasonably withheld, conditioned or delayed by such Party. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void. If Seller or any of its Affiliates enters into any financing and collaterally assigns this Agreement in connection therewith, then (a) Seller or its Affiliates shall enter into a consent to collateral assignment, estoppel certificates or other documentation required in connection with such financing in a form reasonably acceptable to Purchaser, and (b) Seller or its Affiliate shall pay Purchaser for the reasonable third-party expenses incurred by Purchaser in providing such consents to collateral assignment, estoppel certificates and documentation.

13.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures to this Agreement transmitted by facsimile transmission, by email in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

13.15 No Partnership or Joint Venture. The Parties do not intend to create a partnership or joint venture by virtue of this Agreement. Neither Party will owe any fiduciary duty to the other Party by virtue of this Agreement or any other document or Contract contemplated hereby.

13.16 Schedules. Either Party may, at its option, include in its Schedules items that are not material in order to avoid any misunderstanding, and any such inclusion, or any references to dollar amounts, will not be deemed to be an acknowledgment or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement. Information disclosed in any Schedule will constitute a disclosure for purposes of all other Schedules and each Section of this Agreement where such information is relevant notwithstanding the lack of specific cross-reference thereto, but only to the extent the applicability of such disclosure to such other Schedule is reasonably apparent on its face. In no event will the inclusion of any matter in the Schedules be construed as constituting a representation or warranty of a Party or be deemed or interpreted to broaden a Party's representations, warranties, covenants, or agreements contained in this Agreement. No reference to or disclosure of any item or other matter in the Schedules will be construed as an admission, indication, or evidence that such item or other matter is material, that such item is reasonably likely to result in a Purchaser Material Adverse Effect or Seller Material Adverse Effect, or that such item or other matter is required to be referred to or disclosed in the Schedules. No reference in the Schedules to any agreement or document will be construed as an admission or indication that such agreement or document is enforceable or currently in effect or that there are any obligations remaining to be performed or any rights that may be exercised under such agreement or document, except to the extent that any such agreement or document is referred to by reference to the Schedules in an express representation or warranty to that effect set forth in the Agreement. No disclosure in the Schedules relating to any possible breach or violation of any Contract or Law will be construed as an admission or indication that any such breach or violation exists or has actually occurred. The headings and descriptions of the disclosures in the Schedules are for convenience of reference only and are not intended to and do not alter the meaning of any provision of this Agreement or of the Schedules. The information provided in the Schedules is solely for the use of the Parties in connection with the transactions contemplated by this Agreement and will be subject to the terms of this Agreement, and may not be used or relied upon by any other Person or for any other purpose.

[Signature page follows.]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the Execution Date.

SELLER:

[SELLER'S NAME]

By: _____

Name: _____

Title: _____

PURCHASER:

PORTLAND GENERAL ELECTRIC COMPANY,
an Oregon corporation

By: _____

Name: _____

Title: _____

EXHIBIT A-1

Form of Seller's Letter of Credit

EXHIBIT B

Form of Bill of Sale

EXHIBIT C-1

Form of Assignment and Assumption Agreement

EXHIBIT C-3

Form of Transmission Transfer Agreement

EXHIBIT D-1

Form of Purchaser Secretary Certificate

EXHIBIT D-2

Form of Seller Secretary Certificate

EXHIBIT D-3

Form of Seller Incumbency Certificate

EXHIBIT E

Form of EPC Agreement

EXHIBIT I

Form of Estoppels

EXHIBIT J-1

Form of Purchaser Firm Date Certificate

EXHIBIT J-2

Form of Seller Firm Date Certificate

EXHIBIT M

Long-Term Service Agreement

EXHIBIT N

Payment Schedule

EXHIBIT O

Equipment Warranty and Performance Guarantees Agreement

EXHIBIT P

Title Exceptions Subject to Cure

EXHIBIT Q

Form of Licensed Professional Engineer Engagement Agreement

EXHIBIT S

Form of Transmission Services Agreement

SCHEDULE 1.1(k)

Purchaser's Knowledge

SCHEDULE 1.1(I)

Required Approvals

SCHEDULE 1.1(o)

Seller's Knowledge

SCHEDULE 5.5.2(a)

Permitted Contracts

SCHEDULE 5.7

Continuing Insurance Coverage

SCHEDULE 5.10.4

Reports Requiring Reliance Letters

SCHEDULE 5.10.5

Qualified Firms and Consultants

SCHEDULE 5.12.2

Purchaser Obligations

SCHEDULE 6.1.8(c)

Closing Date Estoppel List

SCHEDULE 8.4.4(a)

Purchaser's "Actual Knowledge"

SCHEDULE 8.4.4(b)

Seller's Actual Knowledge

SCHEDULE 1.1(a)

Excluded Assets

SCHEDULE 1.1(b)

Permits

SCHEDULE 1.1(c)

Firm Date Reports

SCHEDULE 1.1(d)

Firm Date Required Consents

SCHEDULE 1.1(e)

Permitted Liens

SCHEDULE 1.1(f)

Project Contracts

SCHEDULE 1.1(g)

Project Equipment

SCHEDULE 1.1(h)

Project Improvements

SCHEDULE 1.1(i)

Project Real Property Agreements

SCHEDULE 1.1(j)

Project Site

SCHEDULE 1.1(n)

Seller and Affiliates IP

SCHEDULE 1.1(q)

Seller's Qualifying Tax Opinion

SCHEDULE 1.1(r)

Firm Transmission Agreements

SCHEDULE 3.4.2

Seller's Consents

SCHEDULE 3.5

Seller's Governmental Approvals and Filings

SCHEDULE 3.6

Seller's Legal Proceedings

SCHEDULE 3.7

Compliance with Laws

SCHEDULE 3.9.3

Project Real Property Agreement Defaults/Breaches

SCHEDULE 3.9.6

Real Property Actions

SCHEDULE 3.10.1

Sufficiency of Project Assets

SCHEDULE 3.10.2

Location of Project Equipment and Project Improvements Not at Project Site

SCHEDULE 3.12.3

EPC Agreement Defaults

SCHEDULE 3.13.2(c)

Firm Date Permit or Project Permit Actions

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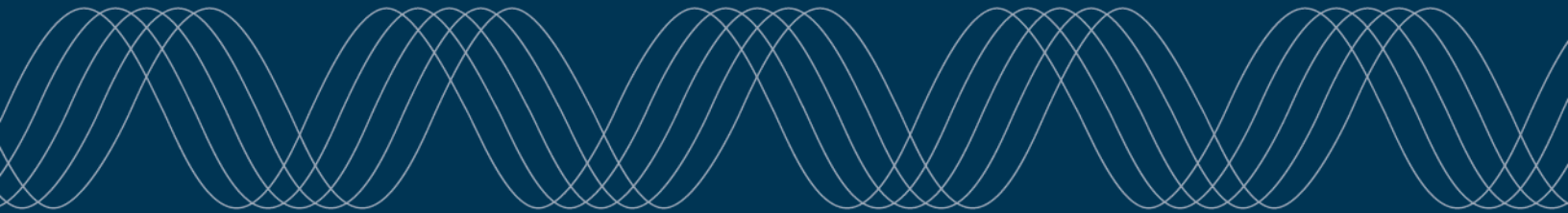
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Appendix G

Renewable Power and Storage Capacity Purchase Form Agreement



2023 All-Source RFP



**WHOLESALE RENEWABLE POWER AND
STORAGE CAPACITY PURCHASE AGREEMENT**

Between

Portland General Electric Company

And

[*Seller*]

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[Note to bidders: The following form agreement pertains to an on-system project, whereby PGE will purchase energy and capacity from a generating resource and storage resource, respectively, that will be constructed at the same time and on the same site. Changes to the terms and conditions or additional terms and conditions may be necessary for an off-system project, or if bidder desires to utilize the storage resource, or if the energy and storage resources are not going to be constructed at the same time.]

This WHOLESALE RENEWABLE POWER AND STORAGE CAPACITY PURCHASE AGREEMENT (“**Agreement**”) is entered into effective as of the _____ day of _____, 20____ (“**Effective Date**”), by and between [Seller], a [State] [Entity Type] (“**Seller**”), and Portland General Electric Company, an Oregon corporation (“PGE”). PGE and Seller are also referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**.”

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 **Definitions.**

As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 1.1.

“AAA Procedures” has the meaning set forth in Section 18.2.

“Abandoned” means that (i) Seller has permanently relinquished all possession or control of the Project other than pursuant to a transfer permitted under this Agreement; (ii) prior to the Commercial Operation Date, Seller has ceased the development (including customary permitting and development activities), construction planning, construction, and testing of the Project for ninety (90) consecutive days; or (iii) following the Commercial Operation Date, Seller has ceased to operate or perform maintenance at the Project for thirty (30) consecutive days, in each case, unless caused by or attributable to a Force Majeure Event or an Unplanned Outage.

“Accounting Standards” has the meaning set forth in Section 17.3.

“Actual Availability” means for any Contract Year, the sum of Actual Availability of the Storage Facility per Settlement Interval divided by the Contract Storage Capacity, as may be adjusted pursuant to this agreement, multiplied by 8,760.

“Actual Round-Trip Efficiency” has the meaning set forth in Exhibit O.

“Affiliate” means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Party. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“AGC” or “Automatic Generation Control” means the equipment and capability of the Storage Facility’s control system to receive Set Point(s) that automatically adjust the amount of Charging Energy, Discharging Energy and Ancillary Services Attributes with respect to the

Storage Facility on a real-time basis and such other operating parameters for which Set Points may be transmitted.

“Agreement” means this Wholesale Renewable Power and Storage Capacity Purchase Agreement entered into between Seller and PGE and all incorporated appendices, exhibits, schedules and attachments to this Agreement, as the same may be amended by the Parties from time to time.

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, energy imbalance services, regulation and frequency response services, reactive supply services, voltage control services, inadvertent energy flow services, operating spinning reserve services, and operating supplemental reserve services.

“Ancillary Service Attributes” means the ancillary services, products and other attributes, defined in Section 3 of the Portland General Electric Company Pro Forma Open Access Transmission Tariff as of the Effective Date, if any that may be obtained from or generated by the Storage Facility.

“AUT Costs” means the net cost, if any, reflected in the PGE’s relevant year AUT filing for the difference between the total benefit of Discharging Energy (i.e. discharging MWhs multiplied by relevant market price in those hours), less total cost of Charging Energy (i.e. charging MWhs multiplied by relevant market price in those hours) in any given day.

“Availability Factor” means, for any Settlement Interval, the ratio, equal to (i) the average available capacity during such Settlement Interval (not to exceed the Contract Storage Capacity) *divided by* (ii) the Contract Storage Capacity; *provided* that, if the Storage Facility is incapable of providing the Contract Storage Capacity during such Settlement Interval due to Seller Excused Hour, then the Availability Factor for such Settlement Interval shall be deemed to be 1.00.

“Back-Up Metering” has the meaning set forth in Section 3.4.9(b)(ii).

“Balancing Authority Area” means an electric power system or combination of electric power systems under the control of an operator who acts to (i) match, at all times, the power output of the electric generators within the electric power system(s) and the capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s), (ii) maintain scheduled interchange with other control areas, within the limits of Prudent Electric Industry Practice, (iii) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Prudent Electric Utility Practice, and (iv) provide sufficient generating capacity to maintain operating reserves in accordance with Prudent Electric Industry Practice.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not dismissed after one hundred and eighty (180) days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Bundled REC” means a REC that, subject to the terms and conditions of this Agreement, is generated by the Generating Facility and delivered simultaneously and directly to PGE together with the equivalent quantity of energy generated by the Generating Facility as a single bundled Products, as represented by the lesser of the final e-Tag or the actual Generating Facility Output on an hourly basis.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party by whom the notice or payment or delivery is to be received.

“Capacity Attributes” means any current or future attribute, as may be currently defined or otherwise defined in the future, including but not limited to a characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, associated with the electric generation capability and capacity of the Generating Facility or the Generating Facility’s capability and ability to produce or curtail energy, including any attribute counted towards any current or future resource adequacy or reserve requirements. Capacity Attributes are measured in MW. Notwithstanding any other provision of this Agreement, “Capacity Attributes” do not include: (i) any PTCs, ITCs, or any other tax credits, deductions, or tax benefits associated with the Generating Facility, or (ii) any state, federal, local, or private cash payments or grants relating in any way to the Generating Facility or the electric power output of the Generating Facility.

“Capacity Shortfall” has the meaning set forth in Section 3.1.21(a).

“Capacity Shortfall Date” has the meaning set forth in Section 3.1.21(b).

“Capacity Shortfall Payment” will be determined at the conclusion of the Capacity Shortfall Date based on the following calculation: [\$ Amount] multiplied by the outstanding MW amount of Capacity Shortfall less Delay Damages paid or payable.

“Change in Law” means the occurrence, after the Effective Date, of any of the following: (i) the adoption or taking effect of any Law, (ii) any change in any Law or (iii) any change in application of any Law.

“Charging Energy” means the amount of energy supplied by PGE at PGE’s cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Storage Facility Point of Delivery to be stored at the Storage Facility for the purpose of charging the Storage Facility and discharged at a later time, as measured by the Storage Facility Metering Facilities, accounting for estimated AC losses (based on methodology agreed to by the Parties in the Operating Procedures) between the Storage Facility Metering Facilities and the Storage Facility Point of Delivery that are not already reflected in the metered data. ***[Note to bidders: This form agreement does not distinguish the original source of the Charging Energy, whether from the Generating Facility or otherwise. If the source of the Charging Energy is limited (e.g., only Generating Facility Energy), modifications to the Agreement will be required.]***

“Claiming Party” has the meaning set forth in Section 4.2(a).

“Commercial Operation” means the Generating Facility and Storage Facility are fully interconnected, fully integrated, and synchronized with the Transmission System. Without limiting Seller’s other obligations under this Agreement, Commercial Operation occurs when all of the following events (a) have occurred, and (b) remain simultaneously true and accurate as of the time at which Seller gives PGE notice that Commercial Operation has occurred:

(i) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that the Nameplate Capacity of the Generating Facility is able to generate electric power reliably in amounts and quality expected by this Agreement and in accordance with all other terms and conditions hereof;

(ii) PGE has received a certificate addressed to the PGE from a Licensed Professional Engineer stating that the Storage Facility has been fully installed, connected to and synchronized with the interconnected high voltage transmission facilities that are a part of the Transmission System to which the Project connects in accordance with the Interconnection Agreement, and is fully capable of charging, storing, and Discharging Energy the Contract Storage Capacity, as confirmed by a Storage Capacity Test, in accordance with the requirements of all Law and this Agreement.

(iii) Start-Up Testing of the Generating Facility shall have been completed;

(iv) PGE has received and reviewed a copy of the initial Storage Capacity Test confirming (1) the Contract Storage Capacity, and (2) the Storage Facility meets the Guaranteed Round-Trip Efficiency.

(v) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that, in accordance with the Interconnection Agreement, the Storage Facility has (i) all AGC equipment installed and operational in accordance with the requirements of this Agreement; and (ii) that the Storage Facility is able to charge, store and discharge energy reliably in amounts expected by and consistent with the terms and conditions of this Agreement.

(vi) Seller has installed and commissioned the Storage Facility Metering Facilities and AGC system equipment, data circuits, and other communication systems necessary to allow for remote monitoring of the Storage Facility.

(vii) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that, in accordance with the Interconnection Agreement, all required Interconnection Facilities have been constructed, all required interconnection tests have been completed and the Generating Facility and Storage Facility are physically

interconnected with the applicable Transmission System in conformance with the Interconnection Agreement.

(viii) PGE has received confirmation from the Transmission Provider(s) that (a) the Generating Facility and Storage Facility have successfully achieved interconnected operations, and (b) Seller has paid all amounts due under the interconnection agreement, including, but not limited to required network upgrades.

(ix) PGE has received a certificate addressed to PGE from an authorized officer of Seller stating that Seller has obtained or entered into all Project Documents, and two (2) copies of any Project Documents requested by PGE; provided, however, that Seller may redact or omit confidential or commercial terms from non-public Project Documents.

(x) PGE has received an opinion from a Licensed Professional Engineer, or an attorney, licensed to practice in the state in which the Site is situated stating that Seller has all Permits and all other rights and agreements required to operate the Project as contemplated by this Agreement in accordance with Law.

(xi) PGE shall have received all Performance Assurance required by this Agreement.

Seller shall provide written notice to PGE stating when Seller believes that the Project has achieved Commercial Operation accompanied by the certificates described above. PGE shall have ten (10) days after receipt of Seller's notice either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PGE reasonably believes has not been satisfied. If, within such ten (10) day period, PGE does not respond or notifies Seller confirming that the Project has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PGE notifies Seller within such ten (10) day period that PGE reasonably believes the Project has not achieved Commercial Operation, the Commercial Operation Date shall not occur until Seller has addressed the concerns stated in PGE's notice to the mutual satisfaction of both Parties.

"Commercial Operation Date" means the date on which the Project achieves Commercial Operation.

"Confidential Information" has the meaning set forth in Section 20.1(b).

"Contract Storage Capacity" means [Project Size] MW_{AC}.

"Contract Termination Damages" has the meaning set forth in Section 3.1.12.

"Contract Year" means the period of consecutive twelve (12) months, commencing on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and continue through

December 31st of such year and the last Contract Year shall continue through the day prior to the anniversary of the Commercial Operation Date.

“Control” means with respect to any Person, the possession, directly or indirectly, of the power either to (i) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (ii) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise. Instances of “Controls”, “Controlling”, “Controlled by”, and “under common Control with” have meanings correlative thereto.

“Costs” means, with respect to a Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements which replace this Agreement and all reasonable attorneys’ fees and expenses incurred by a Party in connection with enforcing its rights under this Agreement. Costs shall not include any expenses incurred by such Party in either entering into or terminating any arrangement pursuant to which it has hedged its obligations.

“Credit Rating” means (i) with respect to any entity other than a financial institution, the (a) current ratings issued or maintained by S&P or Moody’s with respect to such entity’s long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) or (b) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P or Moody’s, or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P or Moody’s with respect to such entity’s long-term, unsecured, unsubordinated deposits.

“Critical Milestone” has the meaning set forth in Section 3.1.13(e).

“Daily” means any twenty-four (24) Hour period commencing at 00:00:00 Hours.

“Delay Damages” for any given day are equal to (A) (i) \$150 per MW of Nameplate Capacity of the Generating Facility per day beginning on the first day after the Scheduled Commercial Operation Date through the 30th day after the Scheduled Commercial Operation Date, (ii) \$250 per MW of Nameplate Capacity of the Generating Facility per day beginning on the 31st day after the Scheduled Commercial Operation Date through the 60th day after the Scheduled Commercial Operation Date, and (iii) \$350 per MW of Nameplate Capacity of the Generating Facility per day beginning on the 61st day after the Scheduled Operation Date through the actual Commercial Operation Date or the Guaranteed Commercial Operation Date, whichever occurs first, *plus* (B) for each day beginning on the first day after the Scheduled Operation Date through the actual Commercial Operation Date or the Guaranteed Commercial Operation Date, whichever occurs first, the product of (i) the Guaranteed Contract Storage Capacity, expressed in kW, multiplied by (ii) the quotient of (a) the Storage Facility Contract Price in the first Contract Year (in \$/MW/month) divided by (b) 30.4.

“Delivered Energy Quantity” means the sum of the energy generated by the Generating Facility that is delivered to PGE by or on behalf of Seller to the Generating Facility Delivery Point

each hour during the Delivery Period as represented on the final e-Tag. The Delivered Energy Quantity shall not exceed the Generating Facility Net Available Capacity in any given hour.

“Delivery Period” has the meaning set forth in Section 2.2.

“Delivery Period Security” has the meaning set forth in Section 9.1(a)(ii).

“Discharging Energy” means energy discharged from the Storage Facility and delivered to PGE at the Storage Facility Point of Delivery, as measured by the Storage Facility Metering Facilities, adjusted for any estimated electrical losses to the Storage Facility Point of Delivery, based on methodology agreed to by the Parties in the Operating Procedures, between the Storage Facility Metering Facilities and the Storage Facility Point of Delivery that are not already reflected in the metered data.

“Disclosing Party” has the meaning set forth in Section 20.1.

“Dispute” has the meaning set forth in Section 18.1.

“Distributed Control System” or “DCS” means the integrated automation system for monitoring and controlling the critical operation functions of the Storage Facility that performs tasks essential to the charge, discharge and storage of electricity.

“Early Termination Date” has the meaning set forth in Section 5.2.1.

“Effective Date” has the meaning set forth in the first paragraph of this Agreement.

“EIM” means the western Energy Imbalance Market, of which PGE is a participating entity.

“Emergency Condition” means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider’s Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC and/or any other Governmental Authority, or (b) any system condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller’s breach of its Interconnection Agreement with the Transmission Provider.

“Emissions Reduction Credit” is any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under the Clean Power Plan promulgated by the Environmental Protection Agency under the Clean Air Act.

“Energy Fixed Price” means [_____](\$/MWh).

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets and allowances, however named, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or otherwise arising as a result of the generation of electricity from the Generating Facility, regardless of whether or not (i) such

environmental attributes have been verified or certified, (ii) such environmental attributes are creditable under any applicable legislative or regulatory program, or (iii) such environmental attributes are recognized as of the Effective Date or at any time during the Term. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; (b) all Emissions Reduction Credits; and (c) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions, such as the carbon content of the energy generated by the Generating Facility and REC Reporting Rights. Environmental Attributes do not include (i) investment tax credits or production tax credits associated with the construction or operation of the Generating Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Facility that are applicable to a state or federal income taxation obligation, (ii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iii) emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and/or air quality permits.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this Agreement.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

“Storage Facility” means energy storage system.

“EWG” means an “exempt wholesale generator,” as defined under Public Utility Holding Company Act of 1935.

“Event of Default” has the meaning set forth in Section 5.1.

“Excess Energy” means Delivered Energy Quantity in excess of [105%] of the Specified Amount.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“FIN 46” has the meaning set forth in Section 19.11.

“Forecasting Agent” shall have the meaning set forth in Section 3.9.1.

“Force Majeure” is defined in Section 4.1.

“GAAP” has the meaning set forth in Section 17.3(a).

“Gains” means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

“Generating Facility” means the *[describe renewable energy technology]* facility more fully described in Exhibit D, and includes all generators, equipment, devices and associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of Products associated with such facility to PGE in accordance with this Agreement (including the Interconnection Facilities).

“Generating Facility Delivery Point” means PGE’s scheduling point for the Generating Facility [BPAT.PGE point of delivery on the BPA side of the BPA-PGE interface or PGE BA].

“Generating Facility Energy” means all electric energy, expressed in MWh, generated by the Facility.

“Generating Facility Meter” means the Generating Facility metering equipment designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided in the Interconnection Agreement.

“Generating Facility Nameplate Capacity” means [] *[solar: MW_{DC}]* *[other resources: MW_{AC}]*, which is the full (maximum) gross power capability of the Generating Facility’s electric power production equipment under optimal conditions designated by the manufacturer and described on Exhibit M; provided, however, that the Generating Nameplate Capacity MW_{AC} value shall be reduced by the Capacity Shortfall measured as of the Capacity Shortfall Date pursuant to Section 3.1.21(c), if applicable, whereupon such revised value shall be the operable Nameplate Capacity for all purposes under this Agreement. ***[Note to bidders: the optimal conditions based on manufacturer designation and the equipment used by the Generating Facility to be agreed upon and included in Exhibit M]***

“Generating Facility Net Available Capacity” means the full (maximum) net energy the Generating Facility is capable of delivering to the interconnecting Balancing Authority Area continuously for at least sixty (60) minutes; which is equivalent to the Generating Facility Nameplate Capacity Rating of the Generating Facility’s generating unit less station service (parasitic power and electrical losses) and inverter limitations, expressed in MW_{AC}.

“Generating Facility Output” means all electric energy, produced by the Generating Facility, less station service (parasitic power and electrical losses), if any, all as measured at the Generating Facility Meter.

“Generating Facility Test Energy” means electric energy generated by the Generating Facility during periods before the Commercial Operation Date, and all RECs, Environmental Attributes and Generating Facility Capacity Attributes associated with such electric energy.

“Generation Forecast” shall have the meaning given to that term in Section 3.6.1.

“Governmental Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof; provided, however, that “Governmental Authority” shall not in any event include either Party.

“Governmental Charges” means any charges or costs that are assessed or levied by any entity, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Products contemplated by this Agreement, or any component of the Products, either directly or indirectly.

“Guaranteed Commercial Operation Date” means the date that is 120 days after the Scheduled Commercial Operation Date.

“Guaranteed Availability” means the Actual Availability of the Storage Facility that is no less than ninety-eight percent (98%).

“Guaranteed Availability Adjustment” has the meaning set forth in Section 6.3(b).

“Guaranteed Round-Trip Efficiency” means the values in Exhibit P in each Contract Year.

“Guaranteed Round-Trip Efficiency Adjustment” has the meaning set forth in Section 6.3(c).

“Guaranteed Contract Storage Capacity” means no less than [Size] MW_{AC} and shall be valid for the Delivery Term of the Agreement with no allowance for degradation.

“Guaranteed Contract Storage Capacity Adjustment” has the meaning set forth in Section 6.3(a)(ii).

“Hazardous Materials” means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (a) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

“Imbalance Energy” means energy, measured in MWh, that (i) was not generated by the Generating Facility but is delivered to PGE as a result of Ancillary Services provided by a Balancing Authority Area or Transmission Provider, or other entity, as applicable, and (ii) is generated by the Generating Facility in excess of Generating Facility Output and delivered to a balancing authority or Transmission Provider or other entity, as applicable.

“Initial Specified Amounts” means the Specified Amounts set forth on Exhibit C as of the Effective Date.

“Interconnection Agreement” means the generator interconnection agreement between Seller and *[identify applicable Transmission Provider]* *[if already executed: dated [_____, 20__].]*

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), or (b) the maximum rate permitted by Law. Notwithstanding the foregoing, in no case shall the Interest Rate be less than zero (0).

“Interconnection Facilities” means all the facilities installed, or to be installed, for the purpose of interconnecting the Generating Facility and the Storage Facility to the Transmission System, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

“ITCs” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

“kW” means a kilowatt of electric power.

“Law” means any act, statute, law, regulation, permit (including applicable Permits), ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Governmental Authority with jurisdiction over Seller, PGE, the Site, the Generating Facility, the Storage Facility or the performance of the obligations under the Agreement, and includes any of the same as they may be amended or imposed from time to time.

“Letter(s) of Credit” means one or more irrevocable, transferable, standby letters of credit issued by a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholders’ equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody’s or A+ from S&P, in a form and substance reasonably acceptable to PGE. The costs of a Letter of Credit shall be borne by Seller.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to be a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholders’ equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody’s or A+ from S&P; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm,

disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall be within fifteen (15) Business Days of expiration or termination, or shall fail or cease to be in full force and effect at any time during the Term, in any such case without replacement; (v) the issuer of such Letter of Credit shall become Bankrupt; or (vi) a Merger Event occurs with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned in accordance with the terms of this Agreement.

“Licensed Professional Engineer” means a Person proposed by Seller and acceptable to PGE in its reasonable judgment who (a) to the extent mandated by Law is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Law specific to such state, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Seller or its members or Affiliates, other than with the prior written consent of PGE, services previously or currently being rendered to Seller or its members or Affiliates, and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Project, or of a manufacturer or seller of any equipment installed in the Project.

“Limited Press Release” has the meaning set forth in Section 20.4.

“Local Provider” has the meaning set forth in Section 3.2.1(a).

“Losses” means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (inclusive of Costs), resulting from termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

“Market Event” has the meaning set forth in Section 3.4.4(b).

“Market Index Settlement Price(s)” means the production-weighted sum of the Market Index Price for each hour during the delivery month. Exhibit I sets forth an accurate and indicative example of a Market Index Settlement Price calculation under certain stated assumptions.

“Market Operator” means the California Independent System Operator or any other entity performing the market operator function for the Energy Imbalance Market or any organized day-ahead or intra-hour market for a region that includes the Transmission System.

“Material Adverse Change” means (i) with respect to PGE, PGE shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody’s or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, (ii) with respect to Seller, Seller shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody’s or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, if rated by both services. If Seller is rated by only one service, a Material Adverse Change shall occur if the rating falls below the pertinent level specified above or if such rating is withdrawn or terminated on a voluntary basis by the rating agency.

“Merger Event” means, with respect to a Party or an Affiliate of a Party that such Party or Affiliate consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity, and (i) the resulting, surviving or transferee entity fails, at the time of such consolidation, amalgamation, merger or transfer, to assume each and all of the obligations of such Party or Affiliate under this Agreement or under any Letter of Credit or other Performance Assurance, either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party, or (ii) the benefits of any Letter of Credit or other Performance Assurance or credit support provided pursuant to this Agreement fail, at any time following such consolidation, amalgamation, merger or transfer, to extend to the performance by such Party or such resulting, surviving or transferee entity of its obligations under this Agreement, or (iii) the Credit Rating (from any of S&P or Moody’s) of the resulting, surviving or transferee entity is not equal to or higher than that of such Party or Affiliate immediately prior to such consolidation, amalgamation, merger, or transfer.

“Storage Facility Metering Facilities” means all metering and data processing equipment used to measure, record, or transmit data relating to Charging Energy and Discharging Energy at the Interconnection Point and all associated ancillary equipment that are required to measure Charging Energy and Discharging Energy at the Interconnection Point.

“Milestone” and “Milestones” have the meaning assigned to those terms in Section 3.1.13(a).

“Month” means a calendar month commencing at hour ending 01:00:00 PPT on the first day of such month through hour ending 24:00:00 PPT on the last day of such month.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“MW” means megawatt.

“MWh” means megawatt hour.

“Negative Price Event” shall have the meaning given to that term in Section 3.6.4.

“NERC” means the North American Electric Reliability Corporation.

“Non-Defaulting Party” has the meaning set forth in Section 5.2.1.

“O&M Records” has the meaning set forth in Section 17.1(i).

“Off-Peak” shall mean all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, PPT, Monday through Saturday and hours ending 01:00:00 through 24:00:00, PPT, on Sundays and NERC designated holidays.

“On-Peak” shall mean all hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, excluding NERC designated holidays.

“Operating Period Security” has the meaning set forth in Section 9.1.

“Operating Procedures” means the operating procedures as described in Exhibit Q.

“Operating Restrictions” means the operating restrictions as described in Exhibit R.

“Oregon Renewable Portfolio Standard” means the renewable portfolio standard contemplated by ORS Chapter 469A, and its implementing regulations, in each case as amended from time to time.

“Outage” means an Unplanned Outage or Planned Outage.

“Outage Notice” has the meaning set forth in Section 3.2.3(c).

“Party” or “Parties” are defined in the preamble of this Agreement.

“Performance Assurance” means collateral in the form of cash or Letter(s) of Credit from a Qualified Institution.

“Permits” shall mean permits, licenses, approvals, consents, orders, registrations, privileges, franchises, memberships, certificates, entitlements variances, waivers, certificates of occupancy and other authorizations issued by any Governmental Authorities, and any siting, zoning and land use approvals required under Law in connection with the development, construction, operation, occupancy, use and/or maintenance of the Site or Project, including those specified in Exhibit E, and all amendments, modifications, supplements, general conditions and addenda thereto.

“Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

“Planned Outage” means a time during which the Project is shut down or its output reduced to undergo scheduled maintenance in accordance Section 3.2.3(a), or as otherwise agreed by Seller and PGE.

“PGE Representatives” has the meaning set forth in Section 3.12.

“Storage Facility Point of Delivery” means the electric system point at [Location] at which (a) PGE delivers Charging Energy to Seller, (b) Seller delivers Discharging Energy to PGE, and (c) Seller makes the Ancillary Service Attributes available to PGE.

“PPT” means Pacific Prevailing Time (i.e., prevailing Standard Time or Daylight Savings Time in the Pacific Time Zone).

“Pre-COD Security” has the meaning set forth in Section 9.1(a)(i).

“Pre-Scheduled Energy” has the meaning set forth in Section 3.9.2.

“Products” means (a) with respect to the Generating Facility, energy scheduled, delivered and sold by Seller and received and purchased by PGE pursuant to this Agreement, together with

all associated Environmental Attributes (including Bundled RECs) and Capacity Attributes, and (b) with respect to the Storage Facility, the Contract Storage Capacity, the Capacity Attributes, the Ancillary Service Attributes, and any future Environmental Attributes from time to time available from, or that may be generated by, the Storage Facility

“Project” means, collectively, the Generating Facility, the Storage Facility, and the Site.

“Project Documents” means the Permits and other written authorizations, rights and agreements now or hereafter necessary for construction, ownership, operation, and maintenance of the Project in accordance with Prudent Electric Industry Practices. Generating Facility Documents include the Permits and other written authorizations, rights and agreements listed in Exhibit E; provided, however, that nothing set forth in Exhibit E limits the obligations of Seller to obtain all Generating Facility Documents required to enable Seller to perform its obligations under this Agreement in accordance with its terms.

“Prudent Electric Industry Practice” means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry in the Western Interconnection that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the Project’s equipment sellers and manufacturers, operational limits, and all Laws and regulations. Prudent Electric Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the Western Interconnection, during the relevant period, as described in the immediately preceding sentence.

“PURPA” means the Public Utility Regulatory Policies Act of 1978.

“QF” means “Qualifying Facility,” as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

“PTCs” means production tax credits under Section 45 of the Internal Revenue Code, as such law may be amended or superseded.

“Qualified Institution” means a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank which is acceptable to PGE, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholders’ equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A- by S&P or A1 by Moody’s, or an insurance company with assets of \$2 billion or greater, an A.M. Best financial strength rating of an A or greater and authorized to issue surety bonds in the state in which the Project is located.

“Qualifying Replacement RECs” means environmental attributes (including renewable energy credits and renewable energy credit reporting rights) that are delivered to PGE bundled with energy produced simultaneously by a generating source that (A) is an Oregon Renewable Portfolio Standard eligible renewable energy resource, (B) produces environmental attributes

(including renewable energy credits and renewable energy credit reporting rights) of the same type and quality as Environmental Attributes (including Bundled RECs and REC Reporting Rights), (C) is located in [Oregon or Washington], and (D) achieves commercial operation after the Commercial Operation Date.

“Qualifying Replacement REC Price” means the price for Qualifying Replacement RECs as determined by taking the lower of two dealer quotes representing a live offer to sell Qualifying Replacement RECs for the entire quantity of Bundled RECs that are being replaced and subtracting the value of the energy component of such quantity (as specified in the applicable dealer quotes) of such Qualifying Replacement RECs.

“REC” means the Environmental Attributes and the REC Reporting Rights associated with Generating Facility Output, however commercially transferred or traded under any or other product names, such as “green tags,” “Green-e Certified,” or otherwise. RECs are accumulated on a MWh basis and one REC represents the Environmental Attributes made available by the generation of one MWh of Generating Facility Output, as represented by the lesser of the final e-Tag or the actual metered Generating Facility Output on an hourly basis. All RECs delivered to PGE under this Agreement must comply with the Oregon Renewable Portfolio Standard.

“REC Reporting Rights” are the right of a PGE to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at such PGE's discretion, and include without limitation those REC Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

“Recording” has the meaning set forth in Section 19.14.

“Receiving Party” has the meaning set forth in Section 20.1.

“Receiving Party's Representatives” has the meaning set forth in Section 20.1(a).

“Regulatory Event” has the meaning given to that term in Section 19.6.

“Reliability Coordinator” means the entity that fulfills the duties of the Reliability Coordinator, as defined by NERC.

“Reliability Entity” may include, without limitation, NERC, WECC, the Balancing Authority, Transmission Provider, regional transmission organization, independent system operator, reliability coordinator or any other entity that has, or that may have in the future, (i) responsibility over the reliability of the bulk power system and (ii) by virtue of such responsibility the legal authority to affect the operations of the Generating Facility, the Storage Facility or delivery of the Products.

“Remedial Action Scheme” means an automatic protection system designed to detect abnormal or predetermined system conditions, and take corrective actions other than or in addition to the isolation of faulted components to maintain system reliability. Such action may include changes in demand, generation (MW and Mvar), or system configuration to maintain system stability, acceptable voltage, or power flows.

“Round-Trip Efficiency” means the ratio, expressed as a percentage, of Discharging Energy output from the Storage Facility to Charging Energy input into the Storage Facility during a Storage Capacity Test.

“S&P” means the Standard & Poor’s, a division of McGraw-Hill Companies, Inc., or any successor thereto.

“Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells any Products not accepted by PGE in breach of PGE’s obligations under this Agreement, deducting from such proceeds any (i) Costs reasonably incurred by Seller in reselling such Products and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Products to the third-party purchasers. “Costs” shall not include any negative price amounts for the Products, penalties, ratcheted demand or similar charges. In no event shall the Sales Price be less than zero dollars (\$0.00).

“SCADA” means supervisory control and data acquisition.

“Schedule,” “Scheduled” or “Scheduling” means the actions of Seller, PGE, a Transmission Provider and all other impacted entities, or their representatives, of notifying, requesting, and confirming/implementing the quantity and type of Products, transmission arrangements, and timing of delivery, subject to the prevailing Western EIM, NAESB, WECC and NERC scheduling requirements.

“Scheduled Commercial Operation Date” means [____, 20__].

“Scheduling Agent” has the meaning set forth in Section 3.9.1.

“Seller” is defined in the Preamble of this Agreement.

“Seller Excused Hour” means an hour in which the Storage Facility is unavailable due to (a) Planned Outage (b) an external condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider’s Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC or WECC, (c) a Force Majeure Event, (d) any failure by PGE to perform a material obligation under the Agreement (other than due to a breach by Seller of its obligations under the Agreement), (e) inspection of operations, or other interference, imposed by a Governmental Authority, Reliability Coordinator, PGE, Balancing Area Authority, or Transmission Provider (in each case, other than resulting from Seller’s acts or omissions).

“Set Point(s)” means the control signal updated every four (4) seconds sent to the Storage Facility by PGE, the Transmission Provider or the Market Operator with respect to the Storage Facility operations using AGC.

“Settlement Amount” means, with respect to this Agreement and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in USD, which such Party incurs as a result of the termination and liquidation of this Agreement pursuant to Article 5. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owed to the

Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount shall not include consequential, punitive, exemplary or indirect or business interruption damages.

"Settlement Interval" means any one hourly time interval beginning on any hour and ending on the next hour.

"Settlement Period" has the meaning set forth in Section 5.2.2.

"Settlement Energy" has the meaning set forth in Section 5.2.2.

"Site" means the real property on which the Project is or will be located, as more fully described on Exhibit F.

"Specified Amounts" means the amount of Generating Facility Output generated by the Generating Facility that Seller is expected to deliver to PGE at the Generating Facility Delivery Point for each monthly period during the Delivery Period. The Specified Amounts for each Month during the following calendar year shall be established by Seller pursuant to Section 3.3.

"Start-Up Testing" means the start-up tests for the Generating Facility as set forth in Exhibit G.

"SQMD" has the meaning set forth in Section 3.4.9(b)(iv).

"Station Service" has the meaning set forth in Section 3.2.1(a).

"Storage Capacity" means the rate of energy in alternating current (electric power), expressed in kW or MW, that the Storage Facility is capable of producing at the Storage Facility Point of Delivery for four (4) consecutive hours.

"Storage Capacity Test" has the meaning set forth in Section 3.4.8(a)(i).

"Storage Facility" means that certain [Project Size] MW_{AC} grid-connected energy storage system as more particularly described in Exhibit B, together with all materials, systems, structures, features, and improvements necessary to store and deliver electricity at such facility.

"Storage Facility Contract Price" means \$[Price] per kW of Contract Storage Capacity.

"Storage Facility Point of Delivery" means the electric system point at [Location] at which (a) PGE delivers Charging Energy to Seller, (b) Seller delivers Discharging Energy to PGE, and (c) Seller makes the Ancillary Service Attributes available to PGE.

"Storage Facility Test Energy" means all Charging Energy and Discharging Energy required to perform the Storage Capacity Test.

“System Control Center” means PGE’s representative(s) responsible for dispatch of the Storage Facility, including but not limited to, the Transmission System Operators, the Balancing Authority Operators, and the Distribution System Operators.

“Taxes” means all taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, including but not limited to ad valorem, consumption, excise, franchise, gross receipts (including any [State Name] business and occupation tax and [State Name] public utility tax and any successor tax thereto), import, export, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto.

“Term” means the period of time referenced in Section 2.1.1.

“Test Period” means the time between the Storage Facility’s energization date as defined in the Interconnection Agreement and Commercial Operation Date where testing and commissioning of the Storage Facility occurs.

“Termination Payment” has the meaning set forth in Section 5.3.

“Transmission Provider(s)” means [Entity Name].

“Transmission System(s)” means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection Point.

“Unplanned Outage” means an unplanned reduction, interruption or suspension of all or a portion of receipts or deliveries to or from the Project, not associated with Seller Excused Hours.

“USD” means United States Dollars.

“WECC” means the Western Electricity Coordinating Council or any successor thereto.

“Western Interconnection” means the network of subsystems of generators, transmission lines, transformers, switching stations, and substations owned or operated by members of the WECC, to the extent located in the continental United States.

“WREGIS” means the Western Renewable Energy Generation Information System.

1.2 **Rules of Interpretation.**

Unless the context otherwise requires:

1.2.1 Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

1.2.2 Subject to ARTICLE 15, any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

1.2.3 Any reference in this Agreement to any Section, Exhibit or Appendix means and refers to the Section contained in, or Exhibit or Appendix attached to, this Agreement.

1.2.4 Any reference in this Agreement to another agreement or document shall be construed as a reference to that other agreement or document as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated, assigned or otherwise transferred.

1.2.5 A reference to writing includes typewriting, printing, lithography, photography, email and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

1.2.6 Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

1.2.7 A reference to a Party to this Agreement includes that Party's successors and permitted assigns.

1.2.8 Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

1.2.9 If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next Business Day.

1.3 **Technical Meanings.**

Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used in this Agreement in accordance with such recognized meanings.

ARTICLE 2

CONTRACT TERM; DELIVERY PERIOD; PRICE; SALE OF FACILITY

2.1 **Term; Conditions Precedent.**

2.1.1 **Term.** The term of this Agreement shall begin on the Effective Date and shall continue through the [XX] anniversary of the Commercial Operation Date (the "**Term**"), unless earlier terminated in accordance with its terms; provided, however, that (a) such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination, and (b) the terms and conditions of this Agreement and any other documents executed and delivered under this Agreement shall continue to govern with respect to obligations arising before termination until such obligations are fully discharged.

2.1.2 **PGE's Conditions Precedent.** PGE's obligations under this Agreement are subject to the following conditions precedent, each of which may be waived by PGE in its sole discretion:

- (a) [Project Specific Conditions: TBD]; and
- (b) All authorizations, approvals and consents of all Persons, including PGE’s Board of Directors, that are required in connection with the execution, delivery, and performance of this Agreement have been received by PGE; and
- (c) Approval of the final shortlist and all other required regulatory approvals have been made and obtained.

If these conditions precedent have not been satisfied or waived by PGE on or before [_____, 20__], either Party shall have the right to terminate this Agreement by giving five (5) Business Days’ prior notice of termination to the other Party. Neither Party shall have any liability for such a termination.

2.1.3 Seller’s Conditions Precedent. Seller’s obligations under this Agreement are subject to the following conditions precedent, each of which may be waived by Seller in its sole discretion: *[Note to bidders: conditions precedent, if any, to Seller’s obligations under the PPA should be set out here]*

If these conditions precedent have not been satisfied or waived by Seller on or before [_____, 20__], either Party shall have the right to terminate this Agreement by giving five (5) Business Days’ prior notice of termination to the other Party. Neither Party shall have any liability for such a termination.

2.2 Delivery Period

Starting on the Commercial Operation Date and continuing through the end of the Term (“**Delivery Period**”), Seller shall Schedule and deliver all of the Generating Facility Output at the Generating Facility Delivery Point and PGE shall confirm and receive all of the Generating Facility Output delivered to the Generating Facility Delivery Point). Additionally, during the Delivery Period, Seller shall sell and deliver, and PGE shall purchase and accept from Seller, all Products associated with or otherwise available from the Storage Facility.

2.3 Price and Adjustments.

2.3.1 For each calendar month during the Delivery Period, and except as otherwise provided in this Agreement, PGE shall pay Seller for the Generating Facility Output delivered to the Generating Facility Delivery Point in the sum of the following:

- (a) hourly Generating Facility Output, each up to [105%] of the Specified Amount for such month, multiplied by the Energy Fixed Price; plus
- (b) hourly Excess Energy multiplied by the lesser of (i) [93%] of the Market Index Price, or (ii) [75%] of the Energy Fixed Price; plus
- (c) for each hour that the Market Index Price is negative, the hourly Delivered Energy Quantity multiplied by [107%] of the Market Index Price.

2.3.2 For each calendar month during the Delivery Period, and except as otherwise provided in this Agreement, the total amount due from PGE to Seller for Storage Capacity shall be calculated as follows:

- (a) the Storage Facility Contract Price multiplied by the Contract Storage Capacity, less
- (b) the Guaranteed Availability Adjustment for such year, if any, less
- (c) the Guaranteed Round-Trip Efficiency Adjustment for such year, if any, less
- (d) the Guaranteed Contract Storage Capacity Adjustment, if any, less
- (e) Storage Facility Test Energy costs that Seller is responsible for pursuant to Section 3.4.8(a)(iii), if any.

An indicative example illustrating the determination of payment due under this Section 2.3 is set forth in Exhibit I.

2.4 **Sales to Third Parties.** One hundred percent (100%) of the Products from the Project shall be dedicated exclusively to PGE for so long as this Agreement is in force and effect and no PGE Event of Default exists. When an undisputed PGE Event of Default has occurred and has not been satisfied by the applicable cure period, and is continuing, Seller may sell, divert, grant, transfer or assign Products to any Person and divert, redirect or make available the Project or any resource therefrom to any Person, and Seller shall receive and be entitled to all revenue therefrom. PGE shall retain the right to Discharging Energy that is already within the Storage Facility at the time the Event of Default arises (if any). Seller shall retain the right to discharge energy that is already within the Storage Facility at the time the Event of Default is resolved (if any), for which Seller has paid for the Charging Energy.

2.5 **Notice of Sale of Project.** If Seller or an Affiliate of Seller desire to sell the Project during the Term, either by a sale of the Project's assets or by a direct or indirect transfer of the membership interest(s) in Seller, Seller shall first, before it or its Affiliate enters into any substantive discussions with other parties, notify PGE of its desire to sell the Project. PGE agrees to notify Seller if it is interested in acquiring the Project within twenty (20) days following receipt of Seller's notice. If PGE so notifies Seller, the Parties shall engage in exclusive good faith negotiations to reach agreement with respect to such a transaction for a period of ninety (90) days thereafter. If during this period the Parties execute a letter of intent, or other document similarly confirming the Parties' intent to enter into a transaction for the purchase and sale of the Project, then such exclusive negotiation period shall be automatically extended for an additional ninety (90) day period, during which time the Parties may execute a purchase and sale agreement for the Project. Any purchase and sale agreement executed within the time frame stated in this Section 2.5 shall remain subject to regulatory approval beyond such time frame, as applicable. Seller may pursue any transaction for the sale of the Project with one or more third parties at any time and from time to time and shall have no obligation to PGE under this Section 2.5 following an occurrence of any of the following: (i) PGE expressly declines interest in acquiring the Project after receipt of Seller's notice provided pursuant to the first sentence of this Section 2.5, (ii) PGE fails to respond to

Seller's notice pursuant to the first sentence of this Section 2.5, within twenty (20) days after receipt thereof; (iii) PGE and Seller fail to execute a letter of intent or other similar document with respect to the sale of the Project within ninety (90) days after PGE's receipt of notice from Seller provided pursuant to the first sentence of this Section 2.5; or (iv) PGE and Seller fail to execute a purchase and sale agreement for the Project within one hundred eighty (180) days after PGE's receipt of notice from Seller provided pursuant to the first sentence of this Section 2.5; provided, however, that with respect to clause (iv), if Seller rejects a firm price delivered by PGE in the course of such negotiations, any sale of the Project to a third party during the subsequent two (2)-year period must be at a price higher than such rejected price or Seller shall be required to re-engage in negotiations with PGE as otherwise set forth in this Section 2.5 for the sale of the Project.

2.6 Option to Purchase/Option to Extend Term.

[Note to bidders: if a Bidder wishes to propose an end of Term or during Term option for PGE to purchase the Project, or an option for PGE to extend the Term of the PPA, it should include its proposal here in its mark up of the Agreement.]

ARTICLE 3 PROJECT DEVELOPMENT, CONSTRUCTION AND OPERATION

3.1 Development and Construction of Project.

3.1.1 Project Documents. Seller shall provide PGE with the documents listed below. To the extent they are available on the Effective Date, such documents have been attached to this Agreement as Exhibit E. With respect to any of the listed Project Documents that become available or are reasonably required to be modified after the Effective Date, Seller shall provide such documents to PGE within ten (10) days after receiving them. Seller may not materially modify such documents or amend Exhibit E after the Effective Date without PGE's prior written consent, which PGE may not unreasonably withhold, condition or delay.

- (a) Seller's proposed Level 1 schedule, including significant Project activities, milestones and deliverables.
- (b) A list of permits and approvals required for the construction and operation of the Project.
- (c) Project layout drawings, including all major equipment and balance of plant equipment.
- (d) An electrical single-line diagram for the Project.
- (e) 12x24 net energy profile and, if available, 8760 net energy production estimate.
- (f) Interconnection Agreement.
- (g) Site specific safety and response plan for site operations.

3.1.2 Labor Requirements.

Project labor must fully comply with the requirements of Oregon House Bill 2021, as applicable. Seller must have, and Seller shall endeavor to cause the construction contractor for the Project and each subcontractor for the Project to have, policies in place that are designed to limit or prevent workplace harassment and discrimination. Additionally, Seller must have, and Seller shall endeavor to cause the construction contractor for the Project and each subcontractor for the Project to have policies in place that are designed to promote workplace diversity, equity and inclusion of communities who have been traditionally underrepresented in the renewable energy sector including, but not limited to, women, veterans and Black, Indigenous and People of Color, with an aspirational goal of having at least fifteen percent (15%) of the total work hours performed by individuals from those communities. Pursuant to ORS 757.306 Seller will within 30 days from the date construction begins, provide a copy of the attestation or declaration or executed project labor agreement to the Oregon Department of Energy.

3.1.3 Permitting. Seller shall obtain all Permits necessary to construct, own and operate the Project in accordance with this Agreement.

3.1.4 Financing. Seller shall obtain any and all financing necessary to construct and operate the Facility during the Term on a schedule consistent with the requirements of this Agreement.

3.1.5 Project Design. Exhibit B includes (i) a detailed description of the Project, including but not limited to, Project layout drawings, including all major equipment and balance of plant equipment, and (ii) a map of the Site that depicts the Project location and the location of ancillary facilities, including the Interconnection Point, for which Seller will provide notice to PGE of the final proposed location of the Generating Facility and Storage Facility at the Site no later than thirty (30) days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to PGE at the earliest practicable time of any other proposed location changes. This Agreement is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior PGE approval, not to be unreasonably withheld. Seller may not modify the Project design as set forth in Exhibit B without prior PGE approval, not to be unreasonably withheld. Seller shall be responsible for designing and building the Project in compliance with all Permits and according to Prudent Electric Industry Practice with respect to project design, engineering and selection and installation of equipment to be used at or installed in the Project. Any review by PGE of the design, construction, operation or maintenance of the Project is solely for PGE's information, and PGE shall have no responsibility to Seller or any third party in connection with such review. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability of the Project.

3.1.6 Compliance. Seller shall (a) design, construct, test, own, operate, repair and maintain the Project in compliance with all Permits and in accordance with the Project Documents and Prudent Utility Practice, including with respect to project design, engineering and selection and installation of equipment to be used at or installed in the Project, and (b) ensure the continuous ability of the Project to satisfy the Seller's obligations to PGE under this Agreement. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

3.1.7 Disclosure. Seller shall provide PGE with all information concerning permitting, engineering, construction, maintenance, and operations of the Project that PGE may reasonably request unless Seller reasonably demonstrates to PGE that Seller is prohibited from providing such information due to confidentiality, disclosure, or use restrictions binding on Seller.

3.1.8 Construction and Testing; Interconnection. Seller shall, at its cost, construct and test the Project and obtain all necessary interconnection rights, all in compliance with the Permits, the Interconnection Agreement, any other agreements with any Transmission Provider, and Prudent Electric Industry Practice. On and after the execution of the Interconnection Agreement, Seller shall provide copies to PGE of any material amendments to the Interconnection Agreement.

3.1.9 Commissioning Tests for Storage Facility. Seller shall give Buyer at least thirty (30) days' prior notice of the approximate test date and of the proposed tests scheduled relating to the commissioning of the Project ("Commissioning Tests") as described in Exhibit O. Representatives of Buyer shall have the right to be present at all such testing. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order for Buyer to arrange for its respective representatives to attend.

3.1.10 Monthly Reports. After the Effective Date, Seller shall provide PGE with monthly written reports regarding Seller's progress in completing the construction, testing and interconnection of the Project and shall, at PGE's request, meet with PGE's representatives to discuss such progress. The monthly report shall include the following: (a) description of the progress toward meeting the Milestones, (b) identifies any missed Milestones, including the cause for the delay, and (c) detailed description of Seller's corrective actions to achieve the missed Milestones.

3.1.11 Equipment Supply. Not later than [_____] Seller shall provide PGE with written evidence of Seller's commitment from the parties identified on Exhibit E for the supply of all of the equipment required to construct and interconnect the Project in a timeframe that reasonably would allow Seller to achieve the Commercial Operation Date of the Project on or before the Scheduled Commercial Operation Date.

3.1.12 Buyer's Access and Inspection Rights. PGE may have its representatives present at the Site to monitor the construction, commissioning, and testing of the Project and its systems. Seller shall provide PGE with notice, pursuant to Section 21.1.1, of all commissioning and testing of the Project and its systems. Seller shall permit physical inspections of the Project upon the reasonable request of PGE at any point during or after construction. PGE shall ensure that all persons visiting the Project on behalf of PGE comply with all the applicable safety and health rules and requirements of Seller that are provided to such persons. Buyer's inspection of the Project or technical reviews shall not to be construed as an endorsement of the Project design or as any warranty of safety, durability, or reliability.

3.1.13 Milestones.

- (a) Seller shall design, construct, own, operate, repair, and maintain the Project in accordance and consistent with the Project Documents and Prudent Electric Industry Practice so as to ensure the continuous ability of the Facility to meet Seller's obligations

to PGE under this Agreement. Seller shall exercise its best efforts, consistent with Prudent Electric Industry Practice, to complete development of the Project in accordance with the dates for each Milestones set forth in this Section 3.1.3 (each, a “**Milestone**” and collectively “**Milestones**”). If Seller fails to meet a Milestone in any material respect by the date on which this Section 3.1.3 requires such Milestone to be achieved, Seller shall deliver to PGE the following no more than ten (10) Business Days after receiving notice from PGE: (i) further information concerning the status of Project development; (ii) a written report containing Seller’s analysis of the reasons behind the failure to meet the original Milestone(s), including a description of the remedial actions that Seller agrees to undertake to complete the Facility by the Commercial Operation Date; and (iii) further assurances that the Project will be completed consistent with the terms of this Agreement.

- (i) Site Control. Seller shall demonstrate site control for the Project as of the Effective Date of this Agreement by ownership or lease of real property sufficient to enable Seller to finance, construct and operate the Project, with any such lease having a term equal to or greater than the Term of this Agreement.
- (ii) Pre-COD Security. On or before the thirtieth (30th) day following the Effective Date, Seller shall post the Pre-COD Security in the amount described in Section 9.1(a);
- (iii) Interconnection Agreement. On or before the ninetieth (90th) day after the Effective Date, Seller shall provide to PGE a fully executed copy of the Interconnection Agreement confirming that the Project will receive Network Resource Interconnection Service;
- (iv) Permits. On or before the [] day after the Effective Date, Seller shall provide to PGE copies of all Permits in final, nonappealable form;
- (v) Delivery Period Security. By the Commercial Operation Date, Seller shall provide Delivery Period Security required under Section 9.1(b);
- (vi) Commercial Operation Date. Seller shall cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date;

provided, however, that the date for achieving each Milestone (other than the dates for posting Pre-COD Security and Delivery Security) shall be extended on a day for day basis for any delay due solely to (i) PGE’s delay in taking, or failure to take, any action required of it hereunder in breach of this Agreement, or (ii) an event of Force Majeure.

- (b) When Seller achieves a Milestone, Seller shall provide to PGE documentation reasonably satisfactory to PGE demonstrating completion of the Milestone. Seller shall provide such documentation to PGE within thirty (30) days of such completion but not later than the date specified above for such Milestone. PGE shall acknowledge receipt of the documentation provided under this Section 3.1.13 and shall provide Seller with written acceptance or denial of each Milestone within fifteen (15) Business Days of receipt of the documentation.

- (c) Seller shall notify PGE promptly (and in any event within ten (10) Business Days) after Seller becomes aware of information that leads to a reasonable conclusion that a Milestone will not be met. Seller shall convene a meeting with PGE to discuss the situation not later than fifteen (15) Business Days after becoming aware of this information.
- (d) If any Milestone (other than a Critical Milestone identified in Section 3.1.13(e)) is not completed on or before the deadline specified for that Milestone in this Section 3.1.13, Seller shall (i) inform PGE of a revised projected date for the achievement of the Milestone, (ii) inform PGE of any impact on the timing of the Commercial Operation Date and on each other Milestone, and (iii) provide PGE with a written report containing Seller's analysis of the reasons behind the failure to meet the original Milestone deadline and describing the remedial actions that the Seller agrees to undertake to ensure the achievement of the Commercial Operation Date by the Scheduled Commercial Operation Date and in any event no later than the Guaranteed Commercial Operation Date. If (1) Seller fails to submit such a report and remedial action plan within thirty (30) days after a Milestone deadline is missed, or (2) Seller timely submits the required report and remedial action plan but thereafter fails to implement the remedial action plan with diligence, or (3) PGE reasonably concludes based on the report and proposed remedial action plan that the Facility is unlikely to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, a Seller Event of Default shall be deemed to have occurred.
- (e) The Milestones described in Sections 3.1.13(a)(i), 3.1.13(a)(v), and 3.1.13(a)(vii) are "**Critical Milestones**" that are separately addressed in Section 5.1 (Events of Default) and Section 3.1.18 (Failure to achieve the Guaranteed Commercial Operation Date).

3.1.14 Notice of Commercial Operation. Seller shall notify PGE not less than five (5) Business Days in advance of the anticipated date of Commercial Operation and shall confirm to PGE in writing when Commercial Operation has been achieved.

3.1.15 Delay Damages. If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay Delay Damages to PGE from and after the Scheduled Commercial Operation Date up to, but not including, the earlier date to occur of (a) the Project achieves Commercial Operation, or (b) the Guaranteed Commercial Operation Date.

3.1.16 Contract Termination Damages. If Seller does not achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, PGE shall have the right to terminate this Agreement upon ten (10) Days' notice to Seller, and Seller shall pay to PGE, as liquidated damages, Contract Termination Damages equal to \$200 per kW of Generating Facility Nameplate Capacity plus \$200 per kW of Contract Storage Capacity (the "**Contract Termination Damages**") in addition to all Delay Damages paid or payable pursuant to Section 3.1.15.

3.1.17 Damages Invoicing. By the tenth (10th) day following the end of the calendar month in which Delay Damages or Capacity Shortfall Damages begin to accrue, as applicable, and continuing on the tenth (10th) day of each calendar month during the period in which Delay Damages accrue (and the following months, if applicable), PGE shall deliver to Seller an invoice

showing PGE's computation of such damages and any amount due PGE in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice and subject to Section 7.2 and Section 7.3, Seller shall pay to PGE, by wire transfer of immediately available funds to an account specified in writing by PGE or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

3.1.18 Failure to Achieve Guaranteed Commercial Operation Date.

(a) PGE's exclusive remedies for the Facility's failure to achieve Commercial Operation by the Scheduled Commercial Operation Date or by the Guaranteed Commercial Operation Date, as applicable, shall be (i) the payment by Seller of Delay Damages and, if applicable, Contract Termination Damages, as provided in Section 3.1.16 and Section 3.1.17, (ii) the right of first offer set forth in Section 3.1.19, and/or (iii) the exercise of step in rights under Section 9.5.

(b) PGE's exclusive remedies for the Facility's failure to achieve Commercial Operation of the full Generating Facility Nameplate Capacity of 120MW_{AC} on or before the Capacity Shortfall Date, if applicable, shall be the payment by Seller of Capacity Shortfall Damages and, if applicable, the Capacity Shortfall Payment, each as provided in Section 3.1.21(c).

3.1.19 Right of First Offer.

(a) If PGE terminates this Agreement before the Commercial Operation Date due to a Seller Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any quantity of the Products associated with or attributable to the Facility to a party other than PGE for a period of two (2) years following the termination date of this Agreement, unless before selling, marketing or delivering such Products, or entering into an agreement to sell, market or deliver such Products, Seller or Seller's Affiliates provide PGE with a written offer to sell the Products on terms and conditions materially similar to the terms and conditions contained in this Agreement. If PGE terminates this Agreement after the Commercial Operation Date due to a Seller Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any quantity of the Projects associated with or attributable to the Project to a party other than PGE on a long term basis (for three (3) months or longer) for a period of two (2) years following the termination date of this Agreement, unless before selling, marketing or delivering such Products, or entering into an agreement to sell, market or deliver such Products, Seller or Seller's Affiliates provide PGE with a written offer to sell the Products at the price and on terms and conditions materially similar to the terms and conditions contained in this Agreement.

(b) If PGE fails to accept an offer made by Seller pursuant to Section 3.1.19(a) within forty-five (45) days of PGE's receipt thereof, Seller and its Affiliates may sell, market or deliver any quantity of the Products associated with or attributable to the Facility at the price offered to PGE to any third party and on any terms in its sole discretion; provided that any offer proposed by Seller to a third party at a price less than the price set forth in this Agreement shall be subject to Seller providing a new written offer to

sell the Facility Output to PGE pursuant to the requirements contained in this Section 3.1.19. PGE's acceptance of such an offer within forty-five (45) days of PGE's receipt thereof may be conditioned on PGE obtaining approval from PGE's Board of Directors or the Oregon Public Utility Commission.

- (c) Subject to the rights contained in Section 15.1 neither Seller nor Seller's Affiliates may sell or transfer the Project, or any part thereof, or land rights or interests in the Site so long as the limitations contained in this Section 3.1.19 apply, unless the transferee agrees in writing to be bound by the terms set forth in this Section 3.1.19 pursuant to a written agreement approved by PGE.
- (d) Seller shall indemnify and hold PGE harmless from all benefits lost and other damages sustained by PGE as a result of any breach by Seller of its covenants contained within this Section 3.1.19. This provision shall survive the termination of this Agreement.

3.1.20 Tax Credits. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive PTCs, ITCs or other tax credits, or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes.

3.1.21 Capacity Shortfall.

(a) If Seller elects to commence Commercial Operation with a Generating Facility size of less than Generating Facility Nameplate Capacity, Seller shall use commercially reasonable efforts to cause the Generating Facility to achieve full Generating Facility Nameplate Capacity of [____]. The difference, measured in [MW_{AC}] [MW_{DC}], between the actual facility size and the Generating Facility Nameplate Capacity is referred to as the "Capacity Shortfall".

(b) Beginning on the Commercial Operation Date and ending on the earlier of (i) the date the Seller causes the Generating Facility to achieve full Generating Facility Nameplate Capacity of [____] or (ii) the date one hundred eighty (180) days after the Commercial Operation Date (such date, the "Capacity Shortfall Date"), Seller shall pay to PGE Capacity Shortfall Damages, which shall be prorated for any partial capacity amounts and time periods.

(c) If Seller fails to cause the Facility to achieve full Generating Facility Nameplate Capacity of [____] on or before the Capacity Shortfall Date, Seller shall pay to PGE the Capacity Shortfall Payment and the Generating Facility Nameplate Capacity shall be revised to the actual [MW_{AC}][MW_{DC}] size of the Facility measured as of the Capacity Shortfall Date.

3.2 Project Operations.

3.2.1 Station Service.

(a) This Agreement does not provide for the supply of retail electric power to the Project, for any purpose ("Station Service"). For the avoidance of doubt, Station Service includes auxiliary loads during periods in which the Storage

Facility is in an idle or standby mode but excludes auxiliary load self-supplied by the Storage Facility during charging and discharging that originated as Charging Energy. Seller shall contract with the local utility in whose retail service territory the Project is located (“**Local Provider**”) for the supply of Station Service consistent with requirements of the Interconnection Agreement.

(b) Seller’s arrangements for the supply of Station Service to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary Station Service for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) days prior to the earlier of the Commercial Operation Date and the in-service date of Seller’s Interconnection Facilities. The terms of this Agreement are not binding upon the Local Provider. For purposes of this Agreement, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is PGE or an Affiliate of Buyer.

(c) Notwithstanding any other provision in this Agreement, nothing in Seller’s arrangements for the supply of Station Service to the Project shall alter or modify Seller’s or Buyer’s rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and PGE in Buyer’s capacity as the Local Provider.

(d) Station Service shall be real time measured by a dedicated meter register and shall not be delivered by Seller to PGE under this Agreement.

(e) Notwithstanding the foregoing or anything to the contrary herein, Seller may power the Project’s HVAC and thermal management systems with auxiliary power subject to the terms and conditions of this Agreement.

3.2.2 Site Control. At all times during the Term, Seller shall control the Site through ownership or lease and shall provide PGE with prompt notice of any change in control of the Site.

3.2.3 Outages

(a) Planned Outages. Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this Agreement. At least sixty (60) days before the Commercial Operation Date, Seller will provide PGE a notice of Planned Outages for the Project for the first Contract Year within the Term. Thereafter, no later than September 1 of each Contract Year, Seller shall provide PGE with a non-binding notice of the annual Planned Outages for the following Contract Year and a notice of estimated long-term Planned Outages for the next four (4) Contract Years. Each notice of Planned Outages must identify each planned interruption and/or reduction of the Project’s capacity, including the duration of such event.

Each annual Planned Outage for the Contract Year will be subject to approval by Buyer, unless (i) maintenance is required to avoid an emergency or damage one or more of the Project, the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities; (ii) maintenance has been deferred at the request of the Buyer, the Transmission Provider, Reliability Coordinator, or a Governmental Authority; (iii) maintenance is required to maintain equipment warranties or as otherwise required by the equipment manufacturer; (iv) maintenance is required by Laws, Transmission Provider, Reliability Coordinator, or a Governmental Authority. PGE may, within fifteen (15) days after receipt of the schedule, request reasonable modifications to the schedule. Buyer PGE may request Seller to defer or reschedule any Planned Outage up to forty-eight (48) hours before commencement of the outage unless the maintenance is addressed by clauses (i) through (iv) of this Section 3.2.3(a). Seller must give PGE no less than sixty (60) days' advance written notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate PGE for AUT Costs incurred by PGE as a result of such change. Seller may not make any changes to any annual maintenance schedule approved by PGE without Buyer's prior written approval.

(b) Seller shall use commercially reasonable efforts to minimize the impact of any Outage, including by scheduling or completing, as applicable, such Outage during hours other than during peak electric load hours for the Transmission System and by minimizing the portion of Contract Storage Capacity subject to an Outage at any time.

(c) Unplanned Outage. PGE and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Seller Excused Hours, as applicable, or an Unplanned Outage. PGE or Seller (as appropriate) shall promptly, or within five (5) minutes, provide the other Party notice ("**Outage Notice**") of the declaration of the existence of Seller Excused Hours or an Unplanned Outage. Seller shall provide such notice, compliant with the then-current PGE Reliability Coordinator outage reporting timing requirements, via telephone to the Buyer's Balancing Authority Area Operator and Power Operations Real-Time Desk, such that the PGE can comply with the Reliability Coordinator reporting requirements. Seller shall confirm in writing any notice of an Unplanned Outage as soon as practicable following such Outage Notice. An Outage Notice provided by either Party shall contain information regarding the nature of the event, the beginning date and time of the event, the expected end date and time of such event, and the expected available Contract Storage Capacity, if any, that would be available at the Storage Facility Point of Delivery during such event. PGE or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event.

(d) Outage Report. Within five (5) Business Days after the end of the month, Seller shall prepare, maintain and deliver to PGE a schedule that identifies

all Planned Outages, Unplanned Outages, and deratings that occurred during the month. The data reported must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between PGE and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

3.3 **Generating Facility Operations.**

The following provisions in this Section 3.3 shall apply to the operations of the Generating Facility:

3.3.1 Generating Facility Test Energy. Seller shall use its best efforts to schedule and deliver Generating Facility Test Energy to its Transmission Provider, to a third-party or to an organized market (to the extent PGE has consented to Seller participating in such organized market pursuant to Section 3.9.8) via its Transmission Provider's system. Seller shall be entitled to any and all compensation received from its Transmission Provider or any third-party or organized market for such Generating Facility Test Energy. Notwithstanding the forgoing, in the event that it is necessary for Seller to schedule and deliver Generating Facility Test Energy to PGE in order to complete Start-Up Testing for the Generating Facility, Seller shall be entitled to do so pursuant to the Scheduling Procedure set forth in Section 3.9.2 (to the extent applicable). In such case, the Parties shall coordinate in good faith to schedule deliveries of Generating Facility Test Energy to PGE that minimizes the burden to each of the Parties, and PGE shall receive the Generating Facility Test Energy. The price for such Generating Facility Test Energy received by PGE shall be zero dollars (\$0.00) and Seller shall pay any costs or additional expenses that are required for PGE to receive the Generating Facility Test Energy, including but not limited to reimbursement for negative pricing and procurement of any necessary capacity costs or reserves.

3.3.2 Operation and Maintenance. Seller shall operate and maintain the Generating Facility, the Facility Meter and that portion of the Interconnection Facilities and related equipment and systems owned by Seller in accordance with Prudent Electric Industry Practice in a manner that is reasonably likely to: (i) maximize the Facility Output, and (ii) result in an expected useful life for such facilities of not less than thirty (30) years.

3.3.3 Generating Facility Meter Inspection and Correction. PGE shall have the right to periodically inspect, test, repair and replace the Generating Facility Meter, without PGE assuming any obligations under the Interconnection Agreement. If any of the inspections or tests disclose an error exceeding 0.5 percent, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the Generating Facility Meter rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the Generating Facility Meter shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PGE arising out of such inaccuracy of metering equipment.

3.3.4 Inspection and Records. During the Term, Seller shall inspect, maintain and repair the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Electric Industry Practice and shall keep records with respect to inspections, maintenance and repairs thereto consistent with Seller's reasonable business judgment. The records of such activities shall be available for inspection by PGE during Seller's regular business hours upon reasonable notice.

3.3.5 Oregon Renewable Portfolio Standard. Seller shall ensure the Facility obtains Oregon RPS Certification within ninety (90) days after the Commercial Operation Date and shall maintain such certification during the Delivery Period.

3.4 Storage Facility Operations.

The following provisions in this Section 3.4 shall apply to the operations of the Storage Facility:

3.4.1 Test Period. Seller and PGE shall mutually agree on the timing and delivery of Charging Energy from Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Storage Facility. Seller shall subsequently deliver such Charging Energy to PGE at the Storage Facility Point of Delivery as Discharging Energy during the Test Period. In accordance with Article 14, Buyer shall retain title of such Charging Energy and Discharging Energy. Seller shall notify Buyer, to the extent practicable, thirty (30) days prior to commencement of such Test Period.

3.4.2 Automatic Generation Control (AGC)

(a) Prior to the Commercial Operation Date or, if applicable, prior to the Test Period, Seller, at its sole cost and expense, shall install AGC at the Storage Facility and shall maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's Set Point(s) margin of error. Seller shall ensure that the Storage Facility's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(b) Beginning on the Commercial Operation Date and throughout the Delivery Term, PGE shall have the right to direct the dispatch of the Storage Facility, via AGC control.

(c) For each day during the Delivery Term, (i) PGE shall be responsible for, if it chooses, to register the Storage Facility in the Western Energy Imbalance Market (EIM) at its sole cost and expense and shall schedule and discharge the Storage Facility in accordance with the EIM's rules, procedures and regulations, including those contained in the EIM OATT, and any applicable PGE business practices and (ii) PGE shall communicate directly to the Storage Facility in real time to dispatch the charging and discharging of the Storage Facility for the control modes identified in Exhibit L. This Section 3.4.2(c) will apply in the event the EIM is replaced, or any other market participation elected by PGE in accordance with Section 3.4.3(b).

(d) PGE will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including NERC holidays) using energy from any source; provided that PGE shall pay for all such energy.

3.4.3 Delivery Arrangements

(a) Seller shall take all actions required in accordance with the terms and conditions of this Agreement to accept the Charging Energy at and from the Storage Facility Point of Delivery, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Storage Facility. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this Agreement. Seller shall secure the interconnection service necessary (i) to deliver the Discharging Energy to the Storage Facility Point of Delivery, and (ii) receive Charging Energy from the grid at the Storage Facility Point of Delivery to the Storage Facility, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project.

(b) Seller shall be responsible for the costs of interconnection (excluding such costs for which Transmission Provider is responsible) and costs required to receive Charging Energy and deliver Discharging Energy at the Storage Facility Point of Delivery at the required voltage, including the costs of any associated network upgrades. As between PGE and Seller under this Agreement, Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharging Energy up to the Storage Facility Point of Delivery and for Charging Energy after the Storage Facility Point of Delivery.

(c) PGE shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges required to deliver Discharging Energy from and beyond the Storage Facility Point of Delivery. PGE shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges for delivery of Charging Energy to the Storage Facility Point of Delivery.

(d) PGE shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) receive Discharging Energy at the Storage Facility Point of Delivery and deliver it to points beyond, and (ii) to deliver Charging Energy to the Storage Facility Point of Delivery.

3.4.4 Obligation to Schedule

(a) PGE shall arrange all scheduling services necessary to ensure compliance with NERC operating policies and criteria, Transmission Provider OATT requirements, including Western EIM requirements, and any other applicable guidelines. Prior to the implementation and applicability to the Storage Facility of any energy market, to the extent scheduling is required now or in the future, PGE shall schedule all Discharging Energy and Charging Energy in accordance with NERC operating policies and criteria, Transmission

Provider OATT requirements and any other applicable guidelines, except that PGE shall not schedule any Discharging Energy or Charging Energy during Unplanned Outages, Planned Outages, and Force Majeure Events.

(b) If at any point during the Delivery Term, an alternative market design is implemented in which the Buyer, at its sole discretion, elects to participate the Storage Facility in an energy market or no longer participate in an energy market (a “**Market Event**”) and such Market Event materially changes the interconnection and delivery requirements in this Agreement, the Parties shall cooperate in good faith to facilitate the delivery of energy from the Storage Facility Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this Agreement to the extent possible; provided that if implementing a Market Event increases Seller’s costs above those costs reasonably anticipated as of the Effective Date PGE shall compensate Seller for the increased costs in either a lump sum or an increase in the Storage Facility Contract Price.

(c) Seller shall communicate to Buyer’s Pre-schedule Desk the Storage Facility’s hourly availability for the Pre-Scheduling Day(s) by 06:00a.m. PPT of the customary WECC Pre-Scheduling Day for each day during the Delivery Term.

(d) Seller shall communicate to Buyer’s Real-time Desk any changes to the Project’s hourly availability, Unplanned Outages and any reduced Operating Restrictions as a result of an Unplanned Outage. Format and content of the daily report shall be subject to review and approval by Buyer.

(e) Unless otherwise specified by superseding policies or procedures of the System Control Center, Seller shall, by 06:00 a.m. PPT on each day, submit a good faith estimate of the hourly Storage Facility availability for the next seven (7) days. If, at any time following submission of a good faith estimate, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify PGE of such change or predicted change.

3.4.5 Operating Procedures

Not later than one hundred and twenty (120) days before the Test Period, Seller shall provide PGE a draft of all Operating Procedures. Not later than sixty (60) days before the Test Period, an operating committee consisting of Seller and PGE representatives shall develop mutually agreeable written Operating Procedures for integration of the Storage Facility into Buyer’s system and shall be included as Exhibit Q to the Agreement. PGE and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharging Energy reports; unit operations log; Seller Unplanned Outage and Planned Outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Storage

Facility at all times consistent with the Operating Procedures, the Agreement, Prudent Utility Practices, Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Law. Personnel of Seller capable of starting, running, and stopping the Storage Facility must be continuously available, either at the Storage Facility or capable of being at the Storage Facility on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per day, seven (7) days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Storage Facility. PGE will use commercially reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

3.4.6 Operating Restrictions

(f) Seller shall operate or procure the operation of the Storage Facility in accordance with Prudent Utility Practices and the Operating Restrictions (“**Operating Restrictions**”) as detailed in Exhibit R, subject only to Emergency Conditions and Force Majeure Events; provided that, during the Term of this Agreement, Seller shall: (i) (subject to Buyer’s dispatching of the Storage Facility and the following clause (ii)) have the sole responsibility to, and shall at its sole expense, operate and maintain the Storage Facility in accordance with all requirements set forth in this Agreement; and (ii) comply with reasonable requirements of PGE regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Restrictions, Seller agrees to operate the Storage Facility in such a manner that Discharging Energy delivered by Seller will meet all requirements for voltage level, harmonics, power factor, VARs, Ancillary Service Attributes and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this Agreement. Seller shall provide PGE with all real time measurement parameters of the Storage Facility including individual inverter and system availability data made available to PGE via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(g) Seller shall operate the Storage Facility such that all system protective equipment is in service whenever the Storage Facility is connected to, or is operated in parallel with, the Transmission Provider’s Transmission System, except for normal testing and repair. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Storage Facility’s protective equipment shall meet the requirements of the Interconnection Agreement and Prudent Utility Practices. Seller shall have qualified independent, third- party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) months. Seller shall perform a unit functional trip test after each overhaul of the Storage Facility’s major equipment and shall provide results to PGE in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. PGE reserves the right to audit and/or observe Seller’s testing and calibration of the protective equipment. Seller shall provide PGE with a ten (10) day written notice of planned testing and/or calibration.

3.4.7 PGE Dispatch Outside of Operating Restrictions

If notwithstanding anything to the contrary in this Agreement, in the event that PGE dispatches the Storage Facility outside of the Operating Restrictions in response to an Emergency Condition and remedies for such dispatch are not otherwise defined within this Agreement, the Guaranteed Availability and Guaranteed Round-Trip Efficiency, may be adjusted to account for the effects, which may include degradation, of such dispatching. Any such adjustments shall be consistent with what would be required by a majority of the lithium-ion battery energy storage industry equipment suppliers for the dispatch and design outlined within this Agreement and shall consider operation of the Storage Facility to-date, including periods of time in which the Storage Facility was operated well within the Operating Restrictions. In the event the Parties cannot agree on appropriate and equitable adjustments, such matter shall be subject to the dispute resolution provisions set forth in Section 18.1. Except for Buyer's negligence or willful misconduct, the event of a PGE dispatch of the Storage Facility outside of the Operating Restrictions shall not be deemed a PGE Event of Default.

3.4.8 Storage Capacity Testing

(a) Storage Capacity Testing and Setting of Contract Storage Capacity.

(i) Prior to the Commercial Operation Date, Seller shall schedule with at least ten (10) Business Days' notice to PGE and complete a storage capacity test of the Storage Facility in accordance with the testing procedures, requirements and protocols set forth in Exhibit O (a "**Storage Capacity Test**"). Thereafter, once per Contract Year, PGE shall schedule with at least sixty (60) days' notice to Seller and Seller shall complete a Storage Capacity Test in accordance with Exhibit O. PGE may reasonably require up to three additional Storage Capacity Tests at any time during each Contract Year if operational data from the Storage Facility indicates a potential underperformance of any of the Performance Guarantees in Section 6.3. All tests must be performed in compliance with manufacturer's testing requirements.

(ii) The Parties shall coordinate all Storage Capacity Tests in good faith to minimize the burden to each of the Parties. PGE may witness all Storage Capacity Tests of the Storage Facility. PGE shall schedule any visit to the Storage Facility in advance with Seller, shall comply with Seller's reasonable written health, safety and security requirements provided to Buyer, and shall not interfere with Seller's construction, installation, start-up, testing, commissioning, operation or maintenance of the Storage Facility.

(iii) PGE shall schedule, deliver, and receive Storage Facility Test Energy in accordance with the scheduling procedures outlined in Section 3.9.2 in order to complete any Storage Capacity Test. PGE is responsible for all costs of Storage Facility Test Energy for the first Storage Capacity Test in each Contract Year and any Buyer-directed Storage Capacity Tests (described in Section 3.4.8(a)(i)) prior to Commercial Operation or during any Contract Year. Seller is responsible for all costs of Storage Facility Test Energy for any Seller-directed Storage Capacity Test (described in Section 3.4.8(a)(i)) and the first Storage Capacity Test prior to Commercial Operation. Storage Facility Test

Energy shall be at wholesale electricity prices inclusive of capacity or reserves costs and any Seller incurred Storage Facility Test Energy costs shall be deducted from the Monthly Payment.

(iv) Following each Storage Capacity Test, Seller shall submit a test report to PGE within ten (10) Business Days in accordance with Exhibit O, together with reasonable supporting data. Within twenty (20) Business Days after submission of a test report, PGE shall have the right to require (Buyer-directed) and Seller shall have the right to schedule (Seller-directed) a retest of the Storage Capacity Test in accordance with Exhibit O.

(v) If the actual capacity determined pursuant to a Storage Capacity Test is less than the then-current Contract Storage Capacity, then the actual capacity determined pursuant to such Storage Capacity Test shall become the new Contract Storage Capacity effective from the date of the Storage Capacity Test for all purposes under this Agreement.

3.4.9 Metering Requirements

(a) Seller shall install Storage Facility Metering Facilities and Back-Up Metering, each in an arrangement consistent with the configuration depicted in the one-line diagram in Exhibit E, or as otherwise agreed between the Parties and in compliance with the Interconnection Agreement.

(b) The following provisions of this Section shall govern Storage Facility Metering Facilities except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case the Interconnection Agreement shall govern.

(i) All Storage Facility Metering Facilities used to measure the Charging Energy and Discharging Energy and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to PGE under this Agreement. The design of the Storage Facility Metering Facilities shall be subject to PGE approval prior to commencement of construction of the Project. PGE shall have the right, at its own expense, to inspect and test the Storage Facility Metering Facilities upon installation and at least annually thereafter and shall provide all test results to Seller upon request within a reasonable timeframe. Storage Facility Metering Facilities shall be bi-directional and shall be capable of measuring and reading instantaneous and hourly real and reactive energy, if supplied by either the grid or Storage Facility. Storage Facility Metering Facilities shall be programmed such that meter readings will reflect losses between the Meter and the Storage Facility Point of Delivery. Seller shall provide PGE with all authorizations necessary to have access to the Storage Facility Metering Facilities, including arranging with the Transmission Provider to provide PGE reasonable access to all Storage Facility Metering Facilities. Seller, at its sole expense, shall also have the right to conduct its own tests of the Storage Facility Metering Facilities in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer, and shall provide all test results to PGE upon request within a reasonable timeframe. Either Party shall have the reasonable opportunity to be present at any time when such Storage Facility Metering Facilities are to be inspected and

tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Buyer.

(ii) In addition to the Storage Facility Metering Facilities, either Party may elect to install and maintain, at its own expense, backup metering devices (“**Back-Up Metering**”), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party shall, at its own expense, inspect and test Back-Up Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, provided, however, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Back-Up Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Back-Up Metering, provided, however, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which case the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(iii) If any Storage Facility Metering Facilities, or Back-Up Metering, are found to be defective or inaccurate outside the bounds of the selected device’s manufacturer’s performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party’s expense.

(iv) SQMD Plan. Prior to commencing Commercial Operation, Seller shall support and reasonably cooperate with PGE in Buyer’s development and submittal to the Market Operator of its Settlement Quality Meter Data (“**SQMD**”) plan for the Storage Facility. The SQMD plan will detail the metering equipment and any calculation or data validation performed as a part of the data submission process to the Market Operator, consistent with the Market Operator’s requirements in the then-current version of the “Business Practice Manual for Metering.”

(v) Other Equipment and Remote Access by Buyer. Without limiting the foregoing obligation, PGE has the right, at its cost and expense, to install any updates or upgrades to the Meters, as well as to install and maintain check meters and related measuring equipment necessary to permit an accurate determination of the quantities of Charging Energy or Discharging Energy delivered under this Agreement, in each case subject to the condition that such updates, upgrades, or other equipment will not interfere with Seller’s Meters or the Project and are not prohibited by the Interconnection Agreement. Seller shall upon reasonable advance notice permit PGE or Buyer’s

representatives access to the Project and interconnection facilities at reasonable times for the purpose of installing and maintaining such check meters. PGE shall ensure that its representatives at all times while at the Site comply with safety and security rules provided by Seller.

3.4.10 Meter Inaccuracies and Retroactive Adjustments

(a) If any inspections or tests of the Storage Facility Metering Facilities or Back-up Metering disclose an error exceeding one-half percent (0.5%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the Storage Facility Metering Facilities rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the Storage Facility Metering Facilities or Back-up Metering were in service since last tested, but not exceeding six (6) months, in the amount the Storage Facility Metering Facilities shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered.

(b) The amount of inaccuracy shall be determined in the following manner:

If the Storage Facility Metering Facilities are found to be defective or inaccurate, the Parties shall use Back-up Metering to determine the amount of such inaccuracy, provided, however, that Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. In the event that Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Storage Facility Point of Delivery and Discharging Energy from the Project to the Storage Facility Point of Delivery, in each case during periods of similar operating conditions when the Storage Facility Metering Facilities registered accurately. The adjustment shall be made for the period as determined pursuant to Section 3.4.10(a).

3.4.11 Planned Maintenance. Seller may not schedule any non-emergency maintenance that reduces the Storage Facility charging or discharging capability by more than ten percent (10%) during June 1st through September 30th unless (i) such outage is required to avoid significant and material damage to the Storage Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through August, (iii) such outage is required in accordance with Prudent Utility Practices, or (iv) the Parties agree otherwise in writing. Each annual Planned Outage at the Storage Facility for a Contract Year shall not exceed two hundred forty (240) hours.

3.5 Specified Amounts. The Initial Specified Amounts shall apply during the period commencing on the Commercial Operation Date through and including the last day of the second (2nd) full calendar year following the Commercial Operation Date. The Initial Specified Amounts for each Month shall be consistent with a generation profile associated with a 50% probability of exceedance forecast using industry standard methodology. On or before September 1st of the second (2nd) full calendar year following the Commercial Operation Date, Seller shall provide PGE with an updated version of Exhibit C establishing the Specified Amounts for the third (3rd)

full calendar year following the Commercial Operation Date through the end of the Delivery Period (i.e., the Specified Amounts will be the same for each of the third (3rd) through the last day of the Delivery Period), and such designated Specified Amounts for each Month shall be consistent with a generation profile associated with a fifty percent (50%) probability of exceedance forecast using industry standard methodology. In the event Seller elects to commence Commercial Operation with a Facility size of less than Generating Facility Nameplate Capacity pursuant to Section 3.1.21, the Specified Amounts in Exhibit C shall be updated to reflect the values corresponding with the Generating Facility Nameplate Capacity measured as of the Capacity Shortfall Date, provided to PGE in writing, within ten (10) Business Days after the Capacity Shortfall Date.

3.6 **Energy Delivery**. Seller shall schedule and deliver Generating Facility Energy to PGE at the Generating Facility Delivery Point, commencing on the Commercial Operation Date and continuing through the end of the Delivery Period, subject to the terms and conditions herein.

3.6.1 Seller shall provide PGE with (i) a rolling generation forecast, updated hourly, for the next fourteen (14) days, (ii) a rolling generation forecast for five (5) minute and fifteen (15) minute intervals, updated every five (5) and fifteen (15) minutes respectively, for the next twenty four (24) hours, and (iii) an updated hourly generation forecast ninety (90) minutes prior to each delivery hour for the balance of the delivery day (“**Generation Forecast**”). Each Generation Forecast shall be performed by the Forecasting Agent. The Forecasting Agent shall utilize methodology consistent that the requirements set forth in Exhibit L. At PGE’s request, (a) Seller shall provide PGE with all reasonably requested information required to facilitate the Parties’ compliance with Reliability Entity requirements, and (b) Seller will cause the Forecasting Agent to provide PGE with an Application Program Interface from which PGE can access raw forecasting files. The Forecasting Agent and PGE shall have real time access to information and forecasts concerning the Facility’s availability status.

3.6.2 Seller shall schedule the Products in accordance with Section 3.9.2 for delivery to PGE at the Generating Facility Delivery Point in the amount of Generating Facility Energy expected to be generated by the Facility consistent with the Generation Forecast. Seller’s Generating Facility Energy delivery Schedule may not intentionally exceed the Generation Forecast in any hour. Seller and PGE agree that the intent of this Section 3.6.2 is for Seller to schedule and deliver Generating Facility Energy resembling actual production for each hour.

3.6.3 Seller shall provide PGE with a real-time ICCP and EIDE communications link to the Generating Facility metered output.

3.6.4 If Seller or its agent reasonably anticipates that Market Index Prices will be less than zero, and Seller expects to receive little or no net payment for its output (“**Negative Price Event**”), Seller shall have the right, but not the obligation, to suspend part or all of its deliveries, via a reduction in Facility Output, for the anticipated duration of the Negative Price Event. In the event the Market Index Price is less than zero during the Negative Price Event, Seller’s obligation to deliver Facility Output shall be reduced by one (1) MWh and Seller’s Specified Amount shall be reduced by one (1) MWh.

3.7 **Environmental Attributes Delivery.** Unless excused by Force Majeure, Seller shall convey to PGE all Environmental Attributes, including Bundled RECs, associated with all Facility Output. Seller represents and warrants that Seller will hold good title, free and clear of any liens or encumbrances, to all Environmental Attributes from the Facility, including all Bundled RECs, conveyed to PGE.

3.7.1 Title to all Bundled RECs transferred by Seller to PGE pursuant to this Agreement shall be settled through WREGIS, and Seller shall cause delivery and transfer of the Bundled RECs to PGE's WREGIS account in accordance with WREGIS rules.

3.7.2 Unless otherwise specified herein or by written notification by PGE, for each month of the Delivery Period after the Commercial Operation Date, Seller shall deliver and convey the Bundled RECs associated with the Facility Output delivered to PGE within ten (10) Business Days after the end of the month in which the WREGIS certificates for such Bundled RECs are created. Seller shall be responsible for attaching, in accordance with all current WREGIS operating rules, all available and applicable NERC e-tags pertaining to the corresponding Bundled REC before such Bundled REC is transferred to PGE in WREGIS.

3.8 **Carbon Emissions.** Seller is responsible for and shall pay for all future costs, if any, whether incurred by Seller or PGE, resulting from any carbon emissions generated by or associated with the Delivered Energy Quantity delivered by Seller to the Generating Facility Delivery Point in accordance with this Agreement. Additionally, Seller is responsible for and shall pay for all costs, if any, whether incurred by Seller or PGE, resulting from any carbon emissions generated by or associated with the Imbalance Energy delivered to the Generating Facility Delivery Point. Seller may provide PGE with carbon emissions offsets that are reasonably satisfactory to PGE in lieu of a monetary settlement. Within ten (10) Business Days after PGE's request, Seller shall provide PGE with the carbon emissions data for the Products that is delivered during the Delivery Period.

3.9 **PGE's Purchase Obligations.** PGE shall purchase and receive the Generating Facility Energy delivered by Seller to the Generating Facility Delivery Point in an amount not to exceed the Generating Facility Net Available Capacity for each hour during the Delivery Period in accordance with and subject to the terms of this Agreement. PGE shall pay Seller the applicable price for all Generating Facility Energy delivered to the Generating Facility Delivery Point as set forth in Section 2.3. PGE shall be responsible for any costs or charges imposed on or associated with the Generating Facility Energy or its receipt, provided such costs or charges are imposed at or on PGE's side of the Generating Facility Delivery Point and not the result of Seller's actions, except any EIM charges resulting from Seller's scheduling adjustments described in Section 3.9.2.

3.9.1 **Seller to Designate Forecasting and Scheduling Agents.** At least thirty (30) days before it begins to Schedule Generating Facility Test Energy under this Agreement, Seller shall engage at its expense a third-party Scheduling Agent (the "**Scheduling Agent**") and a third-party forecasting agent (the "**Forecasting Agent**"), subject in each case to PGE's prior approval. The Scheduling Agent shall perform Seller's pre-scheduling and Scheduling obligations under this Section 3.9.1 based exclusively on forecasts supplied by the Forecasting Agent.

3.9.2 Scheduling Procedure. Seller shall comply with the following “**Scheduling Procedure**” during the Delivery Period with respect to Generating Facility Energy:

- (a) “**Pre-Scheduled Energy**” means Generating Facility Energy scheduled under the following conditions for each day during the Delivery Period:
 - (i) Seller shall communicate to PGE’s Pre-schedule Desk, as directed by PGE, the Generating Facility’s Generation Forecast to be delivered at the Generating Facility Delivery Point for the Pre-Scheduling Day(s) by 5:00 a.m. PPT of the customary WECC Pre-Scheduling Day for each day during the Delivery Period;
 - (ii) Seller shall communicate to PGE’s real time desk via API, or as otherwise directed by PGE, Generating Facility Energy deliveries consistent with the Generation Forecast no later than ninety (90) minutes prior to the flow hour] and
 - (iii) Seller and PGE agree that the intent of these scheduling procedures is for Seller to schedule and deliver Generating Facility Energy that resembles actual generation from the Generating Facility for each hour.]
- (b) Seller shall not schedule any Generating Facility Energy to be delivered to PGE pursuant to this Agreement using a Dynamic or Pseudo-Tie e-Tag as such terms are defined and used by NERC.
- (c) Seller may make adjustments to the Pre-Scheduled Generating Facility Energy scheduled from the Generating Facility each hour in Real-Time (“**Real-time Adjustments**”). If Seller elects to make Real-time Adjustments, Seller will:
 - (i) communicate to PGE’s Real-time Desk, as directed by PGE, its intent to adjust the Pre-Scheduled Generating Facility Energy no later than seventy-five (75) minutes prior to the flow hour; and
 - (ii) submit and receive approval of e-Tag adjustment no later than seventy-five (75) minutes prior to the flow hour. Seller will make all NERC e-Tag adjustments. Seller’s e-tag shall match the adjustment communicated to PGE pursuant to Section 3.9.2(c)(i). Seller shall be responsible for any costs, charges, or fees associated with deviations to the e-tag after seventy-five (75) minutes prior to the flow hour.
- (d) In the event that the regional market design, Balancing Authority, Area, Reliability Entity or Regulatory Entity (e.g. PGE Transmission, BPA Transmission, WECC, NERC, RC West, FERC) causes PGE’s scheduling practices to change after the Effective Date, PGE shall have the right but not the obligation to update the Scheduling Procedure by giving thirty (30) days prior written notice to Seller of such update. Seller shall not unreasonably withhold agreement to proposed changes to these Scheduling Procedures.

3.9.3 Authorized Scheduling Representatives. Each Party shall designate by notice to the other Party its authorized representatives responsible for Scheduling. The initial authorized representatives responsible for Scheduling are set forth on Exhibit A.

3.9.4 Maximum Delivery Amounts. Seller shall sell and deliver, and PGE shall buy and receive, the Delivered Energy Quantity delivered pursuant to this Agreement, up to the Generating Facility Net Available Capacity. If Seller, after the Effective Date, increases (i) the Generating Facility's ability to deliver Generating Facility Output, (ii) Generating Facility Nameplate Capacity, or (iii) the Generating Facility Net Available Capacity through any means, including but not limited to replacement or modification of equipment or related infrastructure, such increased output or capacity shall not be considered Delivered Energy Quantity. PGE and Seller may by mutual agreement separately contract for such increased output or capacity under such terms and conditions that the Parties may agree to. For the avoidance of doubt, nothing in this Agreement shall be construed to obligate PGE to purchase such increased output or capacity.

3.9.5 Title to Energy. Title to Generating Facility Energy shall pass to PGE at the Generating Facility Delivery Point.

3.9.6 Reliability Entity Curtailment. PGE shall not be liable to Seller if curtailment of Scheduled or unscheduled Generating Facility Energy is due to the action of a Reliability Entity and such action shall not be considered a Force Majeure or a PGE Curtailment under Section 3.9.7. Seller shall pay PGE the replacement cost for such Generating Facility Energy. The replacement cost during a Reliability Entity curtailment shall be the greater of zero or the amount calculated as: ((Market Index Price – Fixed Price) multiplied by curtailed Generating Facility Energy based on the Generating Facility's potential generation for periods of the Reliability Entity curtailment. The Forecasting Agent shall calculate the potential generation during periods of the Reliability Entity curtailment.

3.9.7 PGE Curtailment. PGE shall have the right to curtail deliveries of scheduled Generating Facility Energy, up to four hundred (400) hours each Contract Year (or pro rata amount for any partial Contract Year) without compensation to Seller. The Specified Amount will be reduced by the number of MWhs subject to such a curtailment by PGE.

3.9.8 Approval for Seller to Join Organized Markets. During the Term of this Agreement, Seller shall not register as a participating resource in any energy imbalance market, independent system operator market or other organized market without prior written consent from PGE, which consent may be granted in PGE's sole discretion.

3.10 Generating Facility Remedial Action Scheme. To the extent the Generating Facility is not otherwise subject to Seller's Transmission Provider's Remedial Action Scheme, PGE shall have the right to utilize the Generating Facility for PGE's Transmission Provider's Remedial Action Scheme. Before the Commercial Operation Date, Seller shall at its expense make necessary arrangements, including installing any required equipment and entering into any applicable agreements, to enable the Facility to participate in a Remedial Action Scheme for PGE's benefit.

3.11 **Measurement and Transfer of RECs.** Bundled RECs shall be deemed sold and delivered to PGE under this Agreement as they are produced and measured by the Generating Facility Meter. Title to such Bundled RECs shall pass to PGE when generated. PGE shall own or be entitled to claim all Bundled RECs during the Term (including any value in the ownership, use or allocation of Bundled RECs created by legislation or regulation after the Effective Date). The Generating Facility Meter shall serve as the record source for purposes of calculating, certifying, and auditing Generating Facility Output on an hourly basis with respect to Bundled RECs. Seller shall cause the Generating Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Generating Facility and only the Generating Facility. Seller shall cause delivery and transfer of the Bundled RECs to PGE's WREGIS account to be perfected in accordance with WREGIS rules. Seller shall hold the Bundled RECs in trust for PGE until such delivery and transfer is perfected. Each Party shall take such steps and further actions as may be required by WREGIS or Law in order to effect and confirm the sale and delivery of the Bundled RECs to PGE for all purposes.

3.12 **Access.** Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Law relating to workplace health and safety, Seller shall provide PGE and its authorized agents, employees and inspectors ("**PGE Representatives**") with reasonable access to the Project: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) to provide tours of the Project to customers and other guests of PGE (not more than twelve (12) times per year), (d) for purposes of implementing Section 17.2 (Audit Rights), and (e) for other reasonable purposes at the reasonable request of PGE. PGE shall release Seller against and from any and all Liabilities resulting from actions or omissions by any of the PGE Representatives in connection with their access to the Project, except to the extent that such damages are caused by the intentional or negligent act or omission of Seller.

3.13 **Compliance with Reliability Standards.**

To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by NERC, FERC, or OPUC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to PGE by NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse PGE for its share of monetary penalties.

ARTICLE 4
FORCE MAJEURE

4.1 **Definition.**

"**Force Majeure**" means any event or circumstance, or combination of events or circumstances, that meets all of the following criteria:

- (a) arises after the Effective Date,

- (b) was not caused by and is unforeseeable and beyond the reasonable control of the Party claiming the Force Majeure Event,
- (c) is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure Event, and
- (d) either (i) as with respect to PGE as the impacted Party, has an impact which will actually, demonstrably and adversely affect PGE's ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement or (ii) as with respect to Seller as the impacted Party, has an impact which will actually, demonstrably and adversely affect Seller's ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement.

Provided they meet all of the criteria described above, Force Majeure Events may include the following: acts of God, natural disasters, wildfires, earthquakes, tornadoes, lightning, floods, civil disturbances, riots, war and military invasion, physical damage to the Facility caused by third parties who are not subcontractors or representatives, employees or agents of the impacted Party; national labor disputes (including collective bargaining disputes and lockouts) involving Seller or its subcontractor and not directed exclusively at Seller or such subcontractor; a severe inclement weather condition not mentioned above; acts of the public enemy; blockade; acts of terrorism; insurrection, riot or revolution; sabotage or vandalism; embargoes; pandemics, and actions of a Governmental Authority (other than in respect of or in relation to or resulting from Seller's compliance or non-compliance with Laws). Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a Force Majeure Event: (i) strikes, and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Party claiming the Force Majeure Event or its Affiliates or with respect to the work completed by a subcontractor of Seller on the Site unless the strike is part of a more widespread or general strike extending beyond the Party, Affiliate or subcontractor; (ii) cost or shortages of labor or manpower; (iii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) events that affect the cost of equipment or materials; (v) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (vi) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Governmental Authorities; (vii) any weather conditions which are not defined above as Force Majeure Events; (viii) actions of a Governmental Authority in respect of or in relation to or resulting from Seller's compliance or non-compliance with Laws; (ix) any failure by Seller to obtain and maintain any Permit it is required to obtain or maintain hereunder; (x) any other act, omission, delay, default or failure (financial or otherwise) of a subcontractor of Seller or other personnel of Seller; (xi) loss of PGE's markets; (xii) PGE's inability economically to use or resell the Products purchased under this Agreement; (xiii) the loss or failure of Seller's fuel supply or equipment; (xiv) either Party's inability to pay when due any amounts owed under this Agreement; or (xv) Seller's ability to sell the Products at a price greater than the Fixed Price. Seller may not raise a claim of Force Majeure with respect to the unavailability of Generating Facility Energy or Bundled RECs from the Facility based on any of the following: (i) routine or scheduled maintenance of the Project; (ii) any unscheduled outage undertaken to address normal wear and tear of the Project during the Term; (iii) any outage caused by Seller's failure to design, construct,

operate or maintain the Project consistent with Prudent Electric Industry Practice; (iv) changes in climactic conditions; (v) environmental obstructions caused by events or circumstances that may impact the Generating Facility's generation output but without causing a Generating Facility outage (e.g., forest fire or volcanic eruption located outside of the Facility site); (vi) financial inability to perform; (vii) changes in cost or availability of materials, equipment, or services; or (ix) strikes or labor disturbances involving the employees of Seller or any of its subcontractors unless such strike or labor disturbance has a national impact making it impossible for Seller to perform its obligations with respect to the Project; or (x) any reasonably foreseeable inclement weather events, including those caused by, attributable to, or expected to result from climate change.

4.2 **Occurrence and Notice.**

(a) Claims of Force Majeure. To the extent either Party intends to rely on a claim of a Force Majeure Event for purposes of this Agreement, such Party (the "**Claiming Party**") shall:

(i) provide notice and details of the Force Majeure to the other Party as soon as practicable, but in no event later than five (5) Business Days. The notice shall include an estimate of expected duration and the probable impact on the performance of its obligations under this Agreement;

(ii) provide weekly updates during the continuance of the Force Majeure Event that (A) summarize the measures taken by the Claiming Party and that the Claiming Party plans to take in order to mitigate the impact of such Force Majeure Event and (B) provide an estimate of the expected duration of the period during which the performance by the Claiming Party of its material obligations under this Agreement will be prevented or the construction or operation of the Project, as applicable, will be adversely affected due to the Force Majeure Event;

(iii) exercises all commercially reasonable efforts to continue to perform its obligations under this Agreement and to mitigate or limit damages to the other Party; and

(iv) expeditiously, and at its sole cost and expense, takes all commercially reasonable actions necessary to correct or cure the Force Majeure Event or impact thereof so that any suspension of performance or adverse impact on the construction or operation of the Project, as applicable, is no greater in scope and no longer in duration than is necessary based on the Force Majeure Event.

(b) Resumption of Performance. The Claiming Party shall provide prompt notice to the other Party once it is able to resume performance of its obligations following the occurrence of a Force Majeure Event or the impact on the construction or operation of the Project resulting from such Force Majeure Event is resolved, as applicable.

(c) Burden of Proof. The burden of proof as to whether a Force Majeure Event has occurred and whether the Force Majeure Event excuses a Party from performance under this Article 4 shall be upon the Claiming Party.

(d) if all conditions set forth in Section 4.2 above are met, then unless the terms of this Agreement specify otherwise, the Claiming Party shall be excused from the performance of its

obligations related thereto. The non-Claiming Party shall not be required to perform its obligations to the Claiming Party that correspond to the obligations of the Claiming Party that are excused by Force Majeure.

4.3 **Obligations**. No Party shall be relieved by operation of this Article 4 of any liability to pay for Products delivered hereunder or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Force Majeure.

4.4 **Right to Terminate**. If a Force Majeure event prevents a Party from performing its material obligations under this Agreement for a period exceeding one hundred eighty (180) consecutive days before the Commercial Operation Date or, after the Commercial Operation Date, for a period exceeding two hundred forty (240) consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), the unaffected Party, with respect to its obligations under this Agreement, may terminate this Agreement by giving ten (10) days prior written notice of termination to the affected Party. Upon such termination, neither Party will have any liability to the other with respect to periods following the effective date of such termination, except for the right of first offer set forth in Section 3.1.19 and as otherwise expressly provided in this Agreement; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

ARTICLE 5 EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default

An “**Event of Default**” shall mean, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

5.1.1 in the case of the Seller, the occurrence of a Material Adverse Change with respect to Seller; provided, such Material Adverse Change shall not be considered an Event of Default if Seller establishes, delivers to PGE and maintains for so long as the Material Adverse Change is continuing, Performance Assurance in an amount equivalent to the Termination Payment as determined under Section 5.3;

5.1.2 the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;

5.1.3 any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if such inaccuracy is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of default;

5.1.4 if a Party fails to deliver or receive Generating Facility Energy as required by this Agreement, and such failure occurs for (i) more than five (5) consecutive Days, or (ii) ten (10) Days out of any Contract Year (it being the intent of the Parties that other failures to deliver or receive Generating Facility Energy in any Contract Year will be governed by Article 6);

5.1.5 such Party becomes Bankrupt;

5.1.6 the occurrence of a Merger Event with respect to such Party that is not cured within ten (10) Business Days of notice by the other Party;

5.1.7 in the case of Seller, Seller's failure to establish, maintain, extend or increase Performance Assurance when required pursuant to this Agreement;

5.1.8 commencing on the Commercial Operation Date, Seller's failure to deliver fifty percent (50%) of the annual sum of the Specified Amounts to PGE during any two (2) out of three (3) consecutive Contract Years during the Delivery Period;

5.1.9 beginning with the first full calendar year following the Contract Year in which the Commercial Operation Date has occurred, Seller's failure to maintain a minimum Mechanical Availability Percentage for the Generating Facility of ninety-seven percent (97%) for any two (2) out of three (3) Contract Years on a rolling basis. The Mechanical Available Percentage of the Generating Facility shall be determined by Seller by dividing the total Operational Hours for such calendar year *[non-solar resources: by the total number of hours in the calendar year]* *[solar resources: by the total number of daylight hours in the calendar year.]* On or before January 31st of each year, Seller shall provide PGE written documentation, which shall be subject to audit by PGE, to verify or otherwise substantiate Seller's calculation of the Mechanical Available Percentage of the Generating Facility for the prior calendar year. The operational hours for the Facility shall be the hours that the Generating Facility is potentially capable of producing power at Generating Facility Nameplate Capacity regardless of actual weather conditions or season, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the point of interconnection with the Transmission Provider. The methodology for calculating Operational Hours and the resulting Mechanical Availability Percentage is set forth in Exhibit N *[Note to bidders: the Parties would agree to a more detailed methodology consistent with this Section 5.1.9 and attached it as Exhibit N]*;

5.1.10 in the case of Seller, the occurrence of a Letter of Credit Default;

5.1.11 in the case of Seller, the occurrence of an Event of Default under Section 3.1.13(d);

5.1.12 in the case of Seller, the Project is Abandoned;

5.1.13 in the case of Seller, Seller fails to maintain in effect (A) the Interconnection Agreement or (B) any other agreement or any Permit required to receive Charging Energy at the Interconnection Point and deliver Discharging Energy to the Storage Facility Point of Delivery in accordance with Law, and in either case such failure continues for fifteen (15) days after Seller's receipt of written notice or discovery of such failure;

5.1.14 in the case of Seller, Seller sells to a Person other than PGE or diverts for the use of any Person other than Buyer, any of the Product during the Delivery Term (unless there is a then existing PGE Event of Default);

5.1.15 in the case of Seller, Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Commercial Operation Date;

5.1.16 in the case of Seller, if, after the Commercial Operation Date, the Actual Availability for [] or more months within a rolling [] month period during the Delivery Term is less than [percentage];

5.1.17 in the case of Seller, if, after the Commercial Operation Date, the Storage Capacity, is less than the Guaranteed Contract Storage Capacity which remains uncured for a period of thirty (30) days as shown by a new Storage Capacity Test;

5.1.18 in the case of Seller, if, after the Commercial Operation Date, the Actual Round-Trip Efficiency is less than the Guaranteed Roundtrip Efficiency and such failure continues for [•] days after Seller's receipt of written notice or discovery of such failure;

5.1.19 the failure to perform any material covenant or obligation set forth in this Agreement for which an exclusive remedy is not provided in this Agreement and which is not addressed in any other Event of Default, if the failure is not cured within thirty (30) days after the Non-Defaulting Party gives the Defaulting Party notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a sixty (60) day cure period, the Defaulting Party will have such additional time (not exceeding an additional thirty (30) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the Defaulting Party provides the Non-Defaulting Party a remediation plan, the Non-Defaulting party approves such remediation plan, and the Defaulting Party promptly commences and diligently pursues the remediation plan;

5.1.20 Assignment of this of this Agreement, except as permitted in accordance with Section 15.1.

5.2 **Declaration of an Early Termination Date and Calculation of Settlement Amounts.**

5.2.1 Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred at any time during the Term and be continuing, the other Party (the "**Non-Defaulting Party**") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("**Early Termination Date**") on which to liquidate, terminate, and accelerate all amounts owing between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement, and (iii) suspend performance. If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, its Gains or Losses and Costs resulting from the termination of this Agreement as of the Early Termination Date. The Non-Defaulting Party shall calculate the Termination Payment payable hereunder in accordance with Section 5.3 below.

5.2.2 Calculation of Settlement Amounts. The Gains or Losses resulting from the termination of this Agreement shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of this Agreement. The Gains or Losses shall be calculated for a period equal to the remaining Term ("**Settlement Period**"). The quantity of Generating Facility Energy in each month of the Settlement Period shall be equal to the Specified Amount for such month determined under this Agreement as of the time the calculation is made ("**Settlement Energy**").

The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant Products, information vendors and other sources of market information. However, it is expressly agreed that (a) a Party shall not be required to enter into a replacement agreement in order to determine the Termination Payment and (b) a Party's Gains, Losses or Costs will in no event include any penalties, ratcheted demand or similar charges or consequential, punitive, exemplary or indirect or business interruption damages. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

5.3 **Termination Payment.** The "**Termination Payment**" shall equal the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, including a Settlement Amount (if any), less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

5.4 **Notice of Payment of Termination Payment.** As soon as practicable after calculating the Termination Payment, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Termination Payment is due from the Defaulting Party, the Termination Payment shall be made by the Defaulting Party within two (2) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under this Article 5 until the earlier of (i) the date the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed, or (ii) one hundred eighty (180) days after the Early Termination Date.

5.5 **Disputes with Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall pay the non-disputed amount of the Termination Payment as provided in Section 5.4 and transfer, within two (2) Business Days, Performance Assurance to the Non-Defaulting Party in an amount equal to the disputed amount of the Termination Payment.

5.6 **Closeout Setoffs.** After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off against such Termination

Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which the Non-Defaulting Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

5.7 **Suspension of Performance.** Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days with respect to any single Scheduled Product unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

5.8 **Right of First Offer.**

(a) If PGE terminates this Agreement due to a Seller Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any quantity of the Products associated with or attributable to the Project to a party other than PGE for a period of two (2) years if Seller Event of Default is prior to the Commercial Operation Date or six (6) months if Seller Event of Default is after the Commercial Operation Date following the termination date of this Agreement, unless before selling, marketing or delivering such Products, or entering into an agreement to sell, market or deliver such Products, Seller or Seller's Affiliates provide PGE with a written offer to sell the Products on terms and conditions materially similar to the terms and conditions contained in this Agreement (excluding price, which may be adjusted to include updated costs, including, but not limited to, materials, labor and costs of capital).

(i) If PGE fails to accept an offer made by Seller pursuant to Section 5.8(a) within forty-five (45) days of Buyer's receipt thereof, Seller and its Affiliates may sell, market or deliver any quantity of the Products associated with or attributable to the Project to any third party and on any terms in its sole discretion. Buyer's acceptance of such an offer within forty-five (45) days of Buyer's receipt thereof may be conditioned on PGE obtaining approval from Buyer's Board of Directors or the Oregon Public Utility Commission.

(ii) Neither Seller nor Seller's Affiliates may sell or transfer the Storage Facility, or any part thereof, or land rights or interests in the Site so long as the limitations contained in this Section 5.8 apply, unless the transferee agrees in writing to be bound by the terms set forth in this Section 5.8.

(iii) Subject to Section 12.4(a)(i) Seller shall indemnify and hold PGE harmless from all benefits lost and other damages sustained by PGE as a result of any breach by Seller of its covenants contained within this Section 5.8. This provision shall survive the termination of this Agreement.

5.9 **Duty to Mitigate.**

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

5.10 **Post-Termination PURPA Status.** If this Agreement is terminated because of a default by Seller, and Seller has subsequently remedied the default after such termination, neither Seller nor any Affiliate of Seller, nor any successor to Seller with respect to the ownership of the Facility or Site, on whose behalf Seller acts herein as agent, may thereafter require or seek to require PGE to make any purchases from the Facility or any electric generation facility constructed on the Site under PURPA, or any other Law, under terms and conditions different from those set forth in this Agreement (including rates higher than those set forth in this Agreement) for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require PGE to do so. On or before the Effective Date, the Parties shall execute and record, in the appropriate real property records of the counties in which the Facility or Site is situated, and any federal agency as applicable, a memorandum in form acceptable to PGE to provide constructive notice to third parties of Seller's agreements under this Section 5.10. In no event will PGE be required to make any purchases from the Facility or any electric generation facility constructed on the Site in the event the default that caused the termination is still in effect.

ARTICLE 6

FAILURE TO DELIVER/RECEIVE GENERATING FACILITY OUTPUT; STORAGE FACILITY PERFORMANCE GUARANTEES

6.1 **Seller Failure to Deliver Generating Facility Output Energy.** If Seller fails to deliver Generating Facility Output as required by this Agreement or the associated Environmental Attributes, including Bundled RECs, and such failure is not excused by Force Majeure, or by PGE's breach of this Agreement, Seller shall owe PGE an amount as calculated below:

6.1.1 Seller shall owe PGE an amount for such deficiency equal to the positive difference (if any) of the applicable Market Index Settlement Price minus the Energy Fixed Price multiplied by the positive difference (if any) of the Generating Facility Output Seller failed to deliver for the applicable monthly On-Peak and Off-peak period minus the Delivered Energy Quantity delivered during that monthly On-Peak and Off-peak period; and

6.1.2 Seller shall owe PGE any penalties or fines imposed by a Reliability Entity as a result of Seller's failure to deliver Generating Facility Output; and

6.1.3 Seller shall owe PGE an amount for such deficiency should the replacement energy procured by PGE as a result of Seller's failure to deliver the Generating Facility Output results in incremental Carbon Emissions costs to PGE, consistent with Section 3.8; and

6.1.4 Seller shall owe PGE an amount for such deficiency should the replacement energy procured by PGE as a result of Seller's failure to deliver the Generating Facility Output results in incremental ancillary services; and

6.1.5 Seller shall be obligated to settle any shortfall in the delivery of Environmental Attributes (including Bundled RECs) as follows:

- (a) Seller shall, within one hundred twenty (120) days after the end of the shortfall month, deliver an equivalent amount of Qualifying Replacement RECs that are generated in the same calendar year; or
- (b) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs under Section 6.1.5(a) and PGE elects in its sole discretion to purchase Qualifying Replacement RECs, Seller shall owe PGE the price that PGE actually pays for Qualifying Replacement RECs; or
- (c) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs under Section 6.1.5(a) and PGE does not elect, in its sole discretion, to purchase replacement bundled RECs under subpart (b), Seller shall owe PGE the Qualifying Replacement REC Price identified by PGE multiplied by the number of Bundled RECs Seller failed to deliver. PGE shall use commercially reasonable efforts to mitigate the amount owed by Seller under this Section 6.1.5(c).

6.1.6 Any amount owed by the Seller to PGE under this Section 6.1 shall be netted against PGE's payment obligation for the month pursuant to Section 7.4 below.

6.1.7 An example illustrating the calculation of amounts due to PGE under this Section 6.1 under certain stated assumptions is set forth in Exhibit I.

6.2 **PGE's Failure to Accept**. If PGE fails to accept Generating Facility Energy that is scheduled in accordance with Section 3.9.2, and Seller is ready willing and able to deliver Generating Facility Energy to the Generating Facility Delivery Point, and such failure is not excused by a reliability or transmission constraint, Force Majeure or by Seller's failure to perform, then PGE shall owe Seller an amount for such deficiency equal to the positive difference between the applicable purchase price as set forth in Section 2.3.2 for the amount of Generating Facility Energy PGE fails to accept minus the Sales Price associated with the amount of Generating Facility Energy PGE fails to accept. Any such amount owed by PGE to Seller shall be added to the calculation of PGE's payment obligation for the month pursuant to Section 2.3.2. For each MWh of Generating Facility Energy not accepted by PGE pursuant to this Section 6.2, Seller's obligation to deliver the Specified Amount shall be reduced by one (1) MWh. An example illustrating the calculation of amounts due to Seller under this Section 6.2 under certain stated assumptions is set forth in Exhibit I.

6.3 **Storage Facility Performance Guarantees**

(a) Guaranteed Contract Storage Capacity.

- (i) During the Delivery Term, Seller shall maintain the Storage Facility with a Contract Storage Capacity of not less than the Guaranteed Contract Storage Capacity.

(ii) If the Contract Storage Capacity for the Storage Facility is determined during a Storage Capacity Test to be less than the Guaranteed Contract Storage Capacity, Seller shall pay to PGE as liquidated damages for such deficiency an amount determined by *multiplying* (i) the number of months since the last Storage Capacity Test (including the month in which the most current Storage Capacity Test was completed) by (ii) the Storage Facility Contract Price (adjusted to \$/MW/month (*multiplied by* 1,000), *multiplied by* 125% by (iii) the difference between the Guaranteed Contract Storage Capacity and the Storage Capacity as determined during the most recent Storage Capacity Test (“**Guaranteed Contract Storage Capacity Adjustment**”) until such deficiency is cured.

(iii) Payment of Guaranteed Contract Storage Capacity Adjustment is Seller’s sole and exclusive liability, and Buyer’s sole and exclusive remedy, in connection with the Contract Storage Capacity being less than the Guaranteed Contract Storage Capacity for any single Contract Year. This Section 6.3(a)(iii) doesn’t limit Buyer’s right to declare an event of default under Section 5.1.5.

(b) Availability. Seller shall ensure that the Storage Facility has an Actual Availability for each Contract Year during the Delivery Term of no less than the Guaranteed Availability. If the Storage Facility has Actual Availability in a Contract Year less than the Guaranteed Availability, then Seller shall pay PGE liquidated damages in the amount equal to the product of (a) the positive difference between the Guaranteed Availability and the Actual Availability, multiplied by (b) the Contract Storage Capacity during the Contract Year, multiplied by (c) the Storage Facility Contract Price (adjusted to \$/MW/month), multiplied by (d) twelve (12) months (the “**Guaranteed Availability Adjustment**”). No later than the thirtieth (30th) day of such Contract Year (or thirty (30) days after the end of the last Contract Year), Seller shall deliver to PGE a calculation showing Seller’s computation of Actual Availability for the previous Contract Year and the Guaranteed Availability Adjustment, if any, due to PGE (the “**Availability Report**”). Such Availability Report shall include the total amount of the Guaranteed Availability Adjustment. Amounts due and owing will be subject to Article 7.

(c) Round-Trip Efficiency. During the Delivery Term, Seller shall maintain the Storage Facility with an Actual Round-Trip Efficiency greater than the Guaranteed Round-Trip Efficiency values set forth in Exhibit P. Actual Round-Trip Efficiency does not include Station Service. If the Actual Round-Trip Efficiency is below the Guaranteed Round-Trip Efficiency, Seller will pay to PGE an amount equal to (i) the Charging Energy for the months since the last Storage Capacity Test (including the month in which the most current Storage Capacity Test was completed), multiplied by (ii) the percentage amount by which the Actual Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, multiplied by (iii) the average day-ahead Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical Off-Peak (bilateral) indices, weighted by the count of hours in each index during which Charging Energy was supplied by PGE to the Storage Facility Point of Delivery (the “**Guaranteed Round-Trip Efficiency Adjustment**”).

6.4 **Duty to Mitigate.** Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

6.5 **Acknowledgement of the Parties.**

The Parties stipulate that the payment obligations set forth in this Article 6 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages and waive the right to contest such payments as an unreasonable penalty. If either Party fails to pay undisputed amounts in accordance with this Article 6 when due, the other Party shall have the right to: (i) suspend performance until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at Law or in equity to enforce payment of such amount plus interest at the Interest Rate. With respect to the amount of such damages only, the remedy set forth in this Article 6 shall be the sole and exclusive remedy of the Parties for the failure of Seller to sell and deliver, and PGE to purchase and receive the Products and all other damages and remedies are hereby waived. Disagreements with respect to the calculation of damages pursuant to this Article 6 may be submitted by either Party for resolution in accordance with Article 18 and with Law.

6.6 **Survival.** The provisions of this Article 6 shall survive the expiration or termination of this Agreement for any reason.

ARTICLE 7 PAYMENT AND NETTING

7.1 **Billing Period.** Unless otherwise specifically agreed upon by the Parties, the Month shall be the standard period for all payments under this Agreement (other than for Seller or PGE failure under Sections 6.1 and 6.2 respectively and for termination under Section 5.4). On or before the tenth (10th) day of each Month, each Party shall render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding Month. Seller shall read or have read on its behalf the Storage Facility Metering Facilities at the Point(s) of Delivery at 11:59 p.m. PPT on the last day of each month, unless otherwise mutually agreed by the Parties.

7.2 **Timeliness of Payment.** Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each Month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 **Disputes and Adjustments of Invoices.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed

portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this [Section 7.3](#) within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the Month during which performance of this Agreement occurred, the right to payment for such performance is waived.

7.4 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by one Party to the other Party during the monthly billing period under this Agreement, including any related damages calculated pursuant to [Article 5](#) (unless one of the Parties elects to accelerate payment of such amounts as permitted by [Section 5.2.1](#)), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

7.5 **Payment Obligation Absent Netting.** If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to [Article 5](#), interest, and payments or credits, that Party shall pay such sum in full when due.

ARTICLE 8 LIMITATIONS

8.1 **Essential Purposes.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES OF THIS AGREEMENT.

8.2 **Exclusive Remedies.** FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

8.3 **Direct Damages.** IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

8.4 **No Consequential Damages.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

8.5 **Causes Disregarded.** IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS AGREEMENT ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

8.6 **Liquidated Damages.** TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE DAMAGES CALCULATED UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 9 CREDIT AND COLLATERAL REQUIREMENTS

9.1 **Seller Credit Support.**

(a) **Credit Support Amount.**

- (i) Within ten (10) Business Days following execution of Conditions Precedent Satisfaction Certificate, Seller shall transfer Credit Support to PGE having an aggregate value equal to sum of (A) \$200 *multiplied by* the Contract Storage Capacity of the Storage Facility, expressed in kW, plus (B) \$200 *multiplied by* the Nameplate Capacity of the Generating Facility, expressed in kW (the “**Pre-COD Security**”). The Pre-COD Security will apply with respect to Seller until the Commercial Operation Date.
- (ii) By no later than the Commercial Operation Date, Seller shall transfer Credit Support to PGE in substitution of the Credit Support delivered pursuant to Section 8.1(a)(i) having an aggregate value equal to the sum of (A) \$100 *multiplied by* the Contract Storage Capacity of the Storage Facility, expressed in kW, plus (B) the Nameplate Capacity of the Generating Facility, expressed in kW (the “**Delivery Period Security**”).

- (b) **Maintenance of Seller Credit Support.** Seller shall maintain Credit Support for the benefit of PGE having an aggregate value at least equal to the Credit Support Amount then applicable to Seller until the later of (x) the end of the Delivery Term and (y) the date on which all of Seller’s obligations under this Agreement have been satisfied in full (other than contingent obligations with respect to which PGE has not made a claim). If the resolution of any disputed amount may result in a payment due from Seller, Seller’s payment obligations under this Agreement

will not be deemed to have been satisfied until such Dispute is resolved and the amount, if any, payable by Seller upon such resolution has been paid in full. If following the Commercial Operation Date any portion of the Credit Support provided by Seller is applied by PGE to satisfy any outstanding obligations of Seller under this Agreement, then Seller shall within ten (10) Business Days following PGE's written demand replenish such Credit Support so that the amount of Credit Support outstanding in favor of PGE is not less than the Delivery Period Security; provided that Seller's obligation to replenish Credit Support following the Commercial Operation Date is limited to an aggregate amount of replenishment equal to the Delivery Period Security. For the avoidance of doubt, Seller has no obligation to replenish Credit Support prior to the Commercial Operation Date.

9.2 **General Provisions Applicable to Credit Support.**

(a) **Credit Support in the form of Cash.**

- (i) Seller pledges to PGE, as security for its obligations under this Agreement, and grants to PGE a first priority continuing security interest in, lien on and right of set-off against all Credit Support in the form of Cash transferred to or received by PGE under this Agreement. Upon the transfer by PGE to Seller of Cash held by PGE as Credit Support, the security interest and lien granted hereunder on that Cash will be released immediately, and to the extent possible, without any further action by either Party.
- (ii) PGE shall maintain all Credit Support in the form of Cash transferred to or received by PGE with a Qualified Institution for the purpose of holding Credit Support provided to PGE by Seller.
- (iii) In lieu of any interest paid or deemed to have been paid with respect to Credit Support in the form of Cash (all of which may be retained by PGE), Credit Support in the form of Cash will accrue interest on a daily basis at the Interest Rate for the actual number of days elapsed based on a year of 365 days. Seller shall include the amount of the accrued interest, if any, payable by PGE with respect to a month in the invoice provided with respect to such month pursuant to Section 7.1. Any accrued interest will constitute Credit Support in the form of Cash and will be subject to the security interest granted under Section 9.3.
- (iv) For purposes of this Agreement, the value of Credit Support in the form of Cash is equal to the sum of the amount of such Cash plus any interest accrued with respect to such Cash held by PGE as Credit Support.

(b) **Credit Support in the form of a Letter of Credit.**

- (i) Each Letter of Credit must provide that PGE may, and PGE has the right to, in the following situations and upon presentation to the issuer of such Letter of Credit of the certificates or other documentation required by the terms of

the Letter of Credit, draw upon the Letter of Credit in an amount up to the amount due and unpaid by Seller (including any amounts due in connection with the termination of this Agreement) in the case of clause (A) below, or up to the entire amount available to be drawn thereunder in the case of clause (B) below:

- (A) Either (x) an Event of Default has occurred and is continuing with respect to Seller or (y) this Agreement has terminated or an early termination date in respect of this Agreement has been designated in connection with the occurrence of an Event of Default with respect to Seller.
 - (B) A Letter of Credit Default has occurred with respect to the Letter of Credit or sixty (60) or fewer days remain until the expiration date of the Letter of Credit and Seller has failed to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), establish one or more additional Letters of Credit, or otherwise transfer sufficient Credit Support to PGE as required by this Agreement.
- (ii) With respect to each outstanding Letter of Credit, Seller shall either cause the Letter of Credit to be renewed or provide substitute Credit Support, in each case at least sixty (60) days prior to the expiration date of the Letter of Credit. If a Letter of Credit Default occurs with respect to an outstanding Letter of Credit, Seller shall within five (5) Business Days following receipt of PGE's notice of the Letter of Credit Default, as applicable, transfer to PGE substitute Credit Support. For purposes of this clause (ii) of this subsection, the aggregate value of substitute Credit Support that Seller is required to transfer to PGE must be at least equal to the amount required to cause the total value of all outstanding Credit Support, calculated excluding the value of (x) the expiring Letter of Credit, or (y) the Letter of Credit to which the Letter of Credit Default applies, as applicable, to be at least equal to the Credit Support Amount then applicable to Seller.
 - (iii) Upon the occurrence of a Letter of Credit Default of the type described in clauses (ii), (iii), or (vi) of the definition thereof, the issuer of the affected Letter of Credit will no longer be a Qualified Institution for purposes of the definition of the term "**Letter of Credit**" unless otherwise agreed by PGE.
 - (iv) Proceeds received by PGE from any draw on a Letter of Credit will, to the extent not applied to the outstanding obligations of Seller under this Agreement, constitute Credit Support in the form of Cash.

- (v) For purposes of this Agreement the value of Credit Support in the form of Letter of Credit is equal to the amount available to be drawn by PGE under such Letter of Credit.
 - (vi) All costs and expenses associated with establishing, maintaining, renewing, substituting, cancelling, increasing, or reducing the amount of (as the case may be) one or more Letters of Credit are the responsibility of Seller.
- (c) Substitution and Return.
- (i) Upon notice to PGE specifying the items of Credit Support to be exchanged, Seller may on any Business Day transfer to PGE substitute Credit Support, and so long as no Event of Default with respect to Seller has occurred and is continuing, PGE shall return to Seller the items of Credit Support identified by Seller in its notice by not later than the fifth (5th) Business Day following the date on which PGE receives the substitute Credit Support, except that PGE will only be required to return Credit Support with a value as the date of transfer equal to the value of the substitute Credit Support as of the same date.
 - (ii) Upon (A) the reduction of the Credit Support Amount applicable to Seller and (B) the later to occur of (x) the end of the Delivery Term and (y) the satisfaction in full of all of Seller's obligations under this Agreement (other than contingent obligations with respect to which PGE has not made a claim), PGE shall, within five (5) Business Days following receipt of Seller's demand, return to Seller in the case of clause (A) of this subsection, the applicable portion of the Credit Support of the Seller then outstanding in favor of PGE in the amount of the reduction, and in the case of clause (B) of this subsection all Credit Support of Seller then outstanding in favor of PGE. In connection with any such return, PGE shall at Seller's expense take such actions as may be reasonably requested by Seller to evidence the release and termination of the applicable Credit Support.
- (d) Grant of Security Interest/Remedies.
- (i) To secure its obligations under this Agreement and to the extent Seller delivers Credit Support, Seller hereby grants to PGE a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, PGE, and Seller agrees to take such action as PGE reasonably requires in order to perfect PGE first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

- (ii) Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting the Seller, PGE may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Credit Support, including any such rights and remedies under Law then in effect; (ii) exercise its rights of setoff against any and all property of the Seller in the possession of PGE or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Credit Support then held by or for the benefit of PGE free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. PGE shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to PGE after such application), subject to PGE's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

- (viii) **Performance Assurance is Not a Limit on Seller's Liability.** The Performance Assurance contemplated by this Article 9: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be PGE's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that PGE draws on any Pre-COD Security or Delivery Period Security, Seller shall replenish or reinstate the Pre-COD Security or Delivery Period Security to the full amount then required under this Article 9.

9.3 **Waiver.** This Agreement sets forth the entire agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including this Article 9, neither Party:

- (a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article 9 of this Agreement; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

9.4 **Step-In Rights**

9.4.1 **Notice.** At any time after the Facility has achieved Commercial Operation, and if at such time PGE has the right to terminate this Agreement due to an Event of Default, then prior to and in lieu of exercising the termination right related to such Event of Default, PGE shall have the right, but not the obligation, to assume control of and operate the Facility as agent for Seller under the terms and conditions set forth herein ("**Step-In Rights**"). If PGE

contemplates exercising its Step-In Rights under this Section 9.5, PGE shall give Seller at least ten (10) Days' advance notice thereof.

9.4.2 Books and Records. After notice is given and during the relevant notice period, Seller shall collect and have available at a convenient central location at the Facility and shall make available to PGE, at PGE's request, all documents, contracts, books, manuals, reports, records, plans, tools, equipment, inventories and supplies necessary or convenient to construct, operate and maintain the Facility in accordance with Prudent Electric Industry Practice.

9.4.3 Application of Proceeds. During any period that PGE is in control of and operating the Facility pursuant to exercise of its Step-In Rights, PGE shall perform and comply with all of the obligations of Seller under this Agreement and shall apply the Fixed Price that Seller would otherwise be entitled to receive hereunder in respect of the sale of Products and any other revenues of the Facility received by PGE from any source attributable to the Facility operation as follows:

- (i) first, to reimburse PGE for any and all out-of-pocket expenses reasonably incurred by PGE in taking possession of and operating the Facility, including PGE's personnel time and expenses, such operation to be subject to the operating budget and any operating agreement if such agreements are applicable;
- (ii) second, to pay any unpaid amounts owed to PGE under this Agreement;
- (iii) third, to satisfy any payments due and owing to any Lenders, arising after PGE's exercise of its Step-In Rights, and
- (iv) fourth, to Seller.

9.4.4 Title and Possession. During any period that PGE is in control of and operating the Facility pursuant to the exercise of its Step-In Rights, Seller shall retain legal title to and ownership of the Facility and PGE shall assume possession, operation and control solely as agent for Seller, provided that PGE shall operate the Facility in conformance with Prudent Electric Industry Practice (including operation and maintenance of the Facility in accordance with manufacturer's recommendations), the provisions and covenants set forth herein and in the Interconnection Agreement between Seller and the Transmission Provider, all leases, subleases, rights-of-way, easements and rights of ingress and egress used in connection with the Facility and Law (including all material permits, consents, licenses, approvals or authorizations from any Governmental Authority pertaining to the Facility). PGE's exercise of its Step-In Rights shall not be deemed an assumption by PGE of any liability of, or attributable to, Seller; provided, however, during the time PGE is operating the Facility, PGE shall indemnify and hold Seller harmless for any third-party claims against Seller arising out of PGE's negligence or willful misconduct.

9.4.5 Seller's Resumption of Operations. If PGE is in control of the Facility pursuant to the exercise of its Step-In Rights, Seller may resume operation and PGE shall relinquish its right to control and operate the Facility under this Section 9.5 at such time as Seller has demonstrated to PGE's reasonable satisfaction that it possesses the resources to perform its duties under this Agreement.

9.4.6 PGE's Return of Control. If at any time after exercising its Step-In Rights and taking control of and operating the Facility, PGE elects to return control and operation to Seller, PGE shall give Seller thirty (30) Business Days' advance notice of the date that PGE intends to return such control to Seller. Upon receipt of such notice, Seller shall take all actions necessary or appropriate to resume control and operation of the Facility on such date in accordance with the terms of this Agreement.

9.4.7 Purpose. PGE and Seller agree that (i) the Step-In Rights are intended solely to provide further assurance that the terms of this Agreement will be achieved, and accordingly that the purpose of the Step-In Rights is the same as the purpose of this Agreement; (ii) there is no separate or additional consideration for the Step-In Rights; and (iii) Seller's obligations in respect of the Step-In Rights are inextricably interrelated to PGE's obligations under the terms of this Agreement.

ARTICLE 10 GOVERNMENTAL CHARGES

10.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

10.2 Non-Sale Related Governmental Charges and Taxes.

Seller shall pay or cause to be paid all charges or taxes imposed by any government authority ("**Governmental Charges**") on or with respect to the Products arising prior to the Generating Facility Delivery Point or Storage Facility Point of Delivery, as applicable. PGE shall pay or cause to be paid all Governmental Charges on or with respect to the Products at and from the Generating Facility Delivery Point or Storage Facility Point of Delivery, as applicable (other than those related to the sale of the Products, which are the responsibility of Seller). In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are PGE's responsibility hereunder, PGE shall promptly reimburse Seller for such Governmental Charges. If PGE is required by Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, PGE may invoice Seller for the amount of any such Governmental Charges or, in its sole discretion, deduct the amount of any such Governmental Charges from the sums due to Seller under Article 7 of this Agreement. Nothing in this Agreement shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law.

10.3 Sale-related Governmental Charges and Taxes.

In addition to all other payments required under this Agreement, Seller shall be solely responsible for all existing and any new sales, use, excise, ad valorem, and any other similar taxes imposed or levied by any federal, state or local governmental agency on the Products sold and delivered hereunder (including any taxes imposed or levied with respect to the transmission of such energy) up to the delivery of such Products to the Generating Facility Delivery Point or Storage Facility Point of Delivery, as applicable.

10.4 **Indemnification.**

Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all liability for taxes imposed or assessed by any taxing authority with respect to the Products sold, delivered and received hereunder that are the responsibility of such Party pursuant to this Article 10.

ARTICLE 11 RATES AND TERMS BINDING; FERC STANDARD OF REVIEW

11.1 **Mobile-Sierra Doctrine.**

11.1.1 Standard of Review. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, proposed by a Party (to the extent that any waiver in Section 11.1.2 below is unenforceable or ineffective as to such Party), or FERC acting *sua sponte*, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and NRG Power Marketing LLC v. Maine Public Utility Commission, 558 U.S. 527 (2010).

11.1.2 Waiver of FERC Rights. In addition, and notwithstanding Section 11.1.1, to the fullest extent permitted by Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in Law or market conditions that may occur. If it were to be determined that Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection Section 11.1.1 shall not apply, provided that, consistent with Section 11.1.1, neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in Section 11.1.1.

ARTICLE 12 REPRESENTATIONS AND WARRANTIES; INDEMNITY

12.1 **Representations and Warranties.**

On the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

12.1.1 it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

12.1.2 it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

12.1.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

12.1.4 this Agreement, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject only to any Equitable Defenses;

12.1.5 it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

12.1.6 there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

12.1.7 no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

12.1.8 it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

12.1.9 it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in this Agreement;

12.1.10 the material economic terms of this Agreement were subject to individual negotiation by the Parties;

12.1.11 it is an “eligible contract participant” within the meaning of the Commodity Exchange Act.

12.2 **Additional Representations and Warranties of Seller.**

On the Effective Date and throughout the Term, Seller hereby further represents and warrants to PGE that:

12.2.1 Seller has the right to sell the Products to PGE free and clear of liens of encumbrances;

12.2.2 Seller has title to the Products sold under this Agreement free and clear of liens and encumbrances;

12.2.3 Seller is authorized to sell power at market-based rates pursuant to FERC Dockets Number ER [_____];

12.2.4 The Facility is either an EWG or a QF;

12.2.5 Seller has obtained, or will obtain as and when required by this Agreement, all Permits and all other rights and agreements required to construct, own, operate and maintain the Facility, and they will be in full force and effect for the Term;

12.2.6 All leases of real property and other real property rights and agreements required for the operation of the Facility or the performance of any obligations of Seller under this Agreement have been obtained and are owned by Seller, free and clear of liens and encumbrances;

12.2.7 Except as disclosed on Exhibit E, neither Seller nor any Affiliate of Seller has entered into any document, arrangement, understanding, promise or agreement or the like with any Person concerning, with respect to the Facility, (i) remediation or mitigation of environmental impacts, (ii) endangered species, (iii) migratory birds (including eagles), (iv) wildlife and species of conservation concern (state and federal), (v) environmentally, culturally or historically sensitive property or resources, (vi) a military facility, or (vii) national security. In addition, neither Seller nor any Affiliate of Seller has entered into any agreement where public disclosure of the agreement or the subject matter of the agreement could reasonably be expected to negatively affect the Facility's reputation.

12.2.8 Except as disclosed in Exhibit K, there is no litigation, legal action or administrative action pending with respect to the Facility nor, to Seller's knowledge, is any such litigation, legal action or administrative action threatened.

12.2.9 Seller has at all times been fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated in any communication concerning Facility Output, the Facility or the Bundled RECs.

12.2.10 Seller has complied with all Laws in effect or that may be enacted during the Term.

Seller shall disclose to PGE the extent of, and as soon as it is known to Seller, any violation of any Laws arising out of the construction of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

12.3 **No Other Representations or Warranties.** Each Party acknowledges that it has entered into this Agreement in reliance upon only the representations and warranties set forth in this

Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter of this Agreement.

12.4 **Indemnification.**

(a) **Indemnification.**

(i) Subject to the provisions of this Article 12, and to the fullest extent permitted by Law, Seller shall defend, save harmless and indemnify the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable. The waiver of consequential damages set forth in Section 8.4 shall not apply with respect to claims made by third parties.

(ii) Subject to the provisions of this Article 12, and to the fullest extent permitted by law, PGE shall defend, save harmless and indemnify the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable. The waiver of consequential damages set forth in Section 8.4 shall not apply with respect to claims made by third parties.

(b) **Notice of Claims; Procedure.** The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 12 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents' material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding

the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; provided that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) day period set forth in this Section 12.4(b), or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 12.4(b), the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; provided that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 13, as applicable, as to which it has assured the defense; provided, however, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

ARTICLE 13 INSURANCE

13.1 **Evidence of Insurance.** Seller shall on or before each Contract Year, provide PGE with one (1) copy of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit H and this Section 13.1 along with endorsements required below in Section 13.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VIII by A.M. Best or that PGE, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by PGE). Seller's liability under this Agreement shall not be limited to the amount of insurance coverage required herein.

13.2 **Term and Modification of Insurance.**

(a) All liability insurance required under this Agreement shall cover occurrences during the Term of this Agreement on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Effective Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of three (3) calendar years after the Term.

(b) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the

same insufficient for purposes of self-insurance. If at any time during the Term PGE, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, PGE shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit H within sixty (60) days.

13.3 **Endorsements and Other Requirements.**

(a) Seller shall provide endorsements evidencing that the insurers shall provide PGE thirty (30) days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) days for non-payment of premiums) and endorsements that waive all rights of subrogation against PGE and its Affiliates, officers, directors, agents, subcontractors and employees.

(b) Seller shall provide endorsements providing that the insurance required under this Agreement is primary and non-contributory with respect to other insurance carried by Buyer.

With the exception of Workers' Compensation and Employer's Liability, Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C), (D), and (E) of Exhibit H names PGE and its Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent PGE (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (E) of Exhibit H shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured. To the fullest extent permitted by law, Seller shall cause its insurer(s) to waive all rights to recover any payments made by PGE to the liability insurance required pursuant to paragraphs (B), (C), and (E) of Exhibit H.

ARTICLE 14 TITLE AND RISK OF LOSS

Title and risk of loss related to the Products associated with the Generating Facility shall transfer from Seller to PGE at the Generating Facility Delivery Point, except that title to Bundled RECs shall transfer to PGE when generated and shall be measured at the Generating Facility Meter. Title to, and risk of loss for all Products associated with the Storage Facility that are delivered to PGE transfers from Seller to PGE upon delivery at the Storage Facility Point of Delivery. Buyer shall have title to Charging Energy, energy stored in the Storage Facility, and Discharging Energy. Risk of loss for PGE's deliveries of Charging Energy for storage by Seller shall pass from PGE to Seller at the Interconnection Point. Risk of loss for Seller's deliveries of Discharging Energy to PGE shall pass from Seller to PGE at the Storage Facility Point of Delivery.

Seller represents and warrants that it will deliver all Products to PGE free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to the Generating Facility Delivery Point.

**ARTICLE 15
ASSIGNMENT; BINDING EFFECT**

15.1 Assignment.

Neither Party may assign this Agreement or its rights hereunder to any entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any direct or indirect change in control of Seller (whether voluntary or by operation of law) will be deemed an assignment of this Agreement and will require prior written consent of PGE pursuant this Section 15.1. Any assignment or other transfer in violation of this provision is null and void. Seller shall pay PGE's reasonable expenses incurred to provide consents, estoppels or other required documentation in connection with Seller's financing of the Facility.

15.2 Change in Control.

No direct or indirect change in the control of Seller may occur without PGE's prior written consent, not to be unreasonably withheld, conditioned or delayed.

15.3 Binding Effect.

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No assignment or transfer permitted hereunder shall relieve the assigning or transferring Party of any of its obligations under this Agreement.

**ARTICLE 16
GOVERNING LAW**

THE LAWS OF THE STATE OF OREGON (WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF A DIFFERENT JURISDICTION) GOVERN ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ITS INTERPRETATION, CONSTRUCTION, PERFORMANCE, AND ENFORCEMENT.

**ARTICLE 17
RECORDS, AUDIT AND ACCOUNTING**

17.1 Records.

Seller and PGE shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Law. All records of Seller and PGE pertaining to the operation of the Project or this Agreement as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Law and/or any Governmental Authority. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this Agreement (including all records and data relating to or substantiating any charges paid by

or to such other Party, MWh of delivered Discharging Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and O&M Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this Agreement. Seller shall provide PGE copies of O&M Records upon Buyer's request.

(i) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Project that will include, without limitation, dispatch and scheduled Discharging Energy delivered, Charging Energy received, and Station Service consumption; changes in operating status; outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practices or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(ii) Billing and Payment Records. To facilitate payment and verification, Seller and PGE shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 7 and grant the other Party reasonable access to those records.

(iii) Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to PGE of all meteorological and other related data collected at the Project and corresponding unit availability data.

17.2 Audit Rights.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity of Products delivered under this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived.

17.3 Accounting Matters.

(a) The Parties agree that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require PGE to evaluate if PGE must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective

independent registered public accounting firms, whether this Agreement (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with PGE's financial statements pursuant to Accounting Standards Codification 840 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects PGE's accounting treatment for the Agreement, jointly the "**Accounting Standards**"). Seller agrees to provide PGE with information PGE reasonably believes is necessary for PGE to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as PGE deems necessary), and consultations with their respective independent registered public accounting firms, PGE, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(i) Within thirty (30) days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to PGE: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules, in each case, of Seller. If audited financial statements are deemed necessary by PGE's external auditors to complete an audit of PGE's consolidated financial statements, PGE agrees to provide notice to Seller no later than sixty (60) days before the end of the calendar year, and Seller agrees to provide annual audited financial statements within ninety (90) days of each calendar year end thereafter.

(ii) The financial statements to be delivered by Seller in accordance with Section 17.3(a) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 17.3(a), Seller shall provide such statements to PGE within five (5) Business Days after those statements are issued.

(iii) Upon reasonable notice from PGE, during normal business hours and mutually agreed terms and dates, Seller shall allow PGE access to Seller's records and personnel, so that PGE and PGE's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by PGE.

(iv) Once during each calendar quarter, PGE and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8-K disclosure review and discuss Seller's internal control over financial reporting.

(v) PGE shall treat Seller's Financial Statements or other financial information provided under the terms of this Section 17.3 in confidence in accordance with Article 20 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying PGE's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Law in which PGE is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying PGE's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of PGE's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Article 20; (iii) not disclose any of Seller's financial information provided under the terms of this Section 17.3 to the extent that such information is not required by the Accounting Standards or Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 17.3 to that information that reflects Seller's operations of the Project; provided, such limited submission is not contrary to the Accounting Standards or other Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that PGE intends to submit pursuant to this Section 17.3 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if PGE discloses information that, based on the advice of its counsel, is legally required to be disclosed, PGE may make such disclosure without being in violation of this Section 17.3.

ARTICLE 18 DISPUTE RESOLUTION

18.1 Referral to Senior Management.

In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement ("**Dispute**"), either Party may notify the other of the existence of the Dispute. Upon receipt of a notice of Dispute, the Parties' representatives will first attempt to resolve the Dispute informally through negotiation and consultation. If they are unable to do so within ten (10) Business Days after the date on the notice of Dispute was given, then within a further three (3) Business Day period following an additional written request by either Party, (i) each Party shall appoint as its representative a senior officer, and (ii) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

18.2 Mediation.

Any Dispute that is not resolved pursuant to Section 18.1 within thirty (30) days after the Dispute notice was given may be submitted for mediation by either Party before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the AAA in effect at the time of the mediation ("**AAA Procedures**"); provided, however, that in the event of any conflict between the procedures herein and the AAA

Procedures the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from each of the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as confidential. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by: (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, (c) two unexcused absences by either Party from the mediation sessions, or (d) failure to resolve the Dispute on or before the sixtieth (60th) day after the date on which the notice of Dispute was given (unless the Parties otherwise agree in writing to extend such date). The mediator will never participate in any claim or controversy covered by this Article 18 as a witness, collateral contract, or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

18.3 **Legal Action.**

If the Parties are still unable to resolve their differences through mediation pursuant to Section 18.2 within sixty (60) days after the date on which notice of the Dispute was originally given, then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the courts of the State of Oregon located in the City of Portland or the courts of the United States of America for the District of Oregon having subject matter jurisdiction. By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby (a) accepts the exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) irrevocably waives, to the fullest extent permitted by Law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by Law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Exhibit A, or at such other address of which the Parties have been notified. The dispute resolution process contemplated by this Agreement shall not prevent a Party from seeking temporary or preliminary equitable relief to prevent irreparable damage to that Party or to preserve the status quo pending resolution of a Dispute, and this Section 18.3 shall apply with respect to any application for such relief.

18.4 **Waiver of Jury Trial.** EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY

LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

18.5 **Attorneys' Fees.** If either Party institutes any legal suit, action or proceeding against the other party arising out of or relating to this Agreement, including, but not limited to, contract, equity, tort, fraud and statutory claims, the prevailing party in the suit, action or proceeding will be entitled to receive, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the suit, action or proceeding, whether incurred before suit, during suit, or at the appellate level, including reasonable attorneys' fees and expenses, court costs and other legal expenses such as expert witness fees, and all fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings.

18.6 **Survival.** The provisions set forth in this Article 18 shall survive the termination or expiration of this Agreement.

ARTICLE 19 GENERAL PROVISIONS

19.1 Entire Agreement.

This Agreement (including the attached exhibits and schedules), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all transactions under this Agreement constitute the entire agreement between the Parties relating to the subject matter and supersedes any and all prior oral or written understandings. Any and all Exhibits referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

19.2 Joint Efforts.

This Agreement shall be considered for all purposes as prepared through the joint efforts of both Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.3 Amendments in Writing.

No amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

19.4 No Third-Party Beneficiaries.

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement), it being the intent of the Parties that this Agreement shall not be construed as a third-party beneficiary contract.

19.5 **Non-Waiver.**

No waiver by any Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

19.6 **Severability.**

Any provision of this Agreement declared or rendered invalid, unlawful, or unenforceable by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement. The Parties shall, however, in good faith attempt to agree on the replacement of the void, illegal, or unenforceable provision with a legally acceptable clause that corresponds as closely as possible to the sense and purpose of the affected provision.

19.7 **Survival.**

All indemnity and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect, after the expiration or termination for any reason of this Agreement, for the purpose of complying herewith.

19.8 **Bankruptcy Matters.**

The Parties acknowledge and intend that this Agreement, the transactions contemplated in this Agreement, and any instruments that may be provided by either Party under this Agreement will each, and together, constitute one and the same “forward contract,” “forward agreement” and “master netting agreement” within the meaning of the Bankruptcy Code, and that PGE and Seller are “forward contract merchants” within the meaning of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, or otherwise take any position to the effect that this Agreement, the transactions contemplated under this Agreement, and any instrument(s) that may be provided by either Party under this Agreement do not each, and together, constitute one and the same “forward contract,” “forward agreement” and “master netting agreement” within the meaning of the Bankruptcy Code, or that PGE and Seller are not “forward contract merchants” within the meaning of the Bankruptcy Code.

19.9 **Relationships of Parties.**

The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement will not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and PGE or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Neither

Party has any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.

19.10 **Headings**. The headings used for the Sections and Articles herein are for convenience and reference purposes only and shall not affect the meaning or interpretation of this Agreement.

19.11 **Consolidation of Variable Interest Entities**.

If PGE or one of its Affiliates determines that, under Accounting Standards Codification 810 (“**ASC 810**”) Consolidation of Variable Interest Entities (“**VIE’s**”), formerly referred to as the Financial Accounting Standards Board’s revised Interpretation No. 46 (“**FIN 46**”), it may hold a controlling financial interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide, upon PGE's written request, sufficient financial and ownership information so that PGE or its Affiliate may assess whether a controlling financial interest in a VIE does exist under FIN 46. If PGE or its Affiliate determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide, upon PGE's written request, sufficient financial and other information to PGE or its Affiliates so that PGE may properly consolidate the entity in which it holds the controlling financial interest and present the required disclosures. PGE shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with PGE's requests for information under this Section 19.11.

19.12 **Change in Law**.

The price will not be affected by any change in any Law that alters either PGE’s or Seller’s costs in connection with this Agreement, Seller’s operation of the Project, or the value of the Product, including any Environmental Attributes, delivered or transferred under this Agreement, or affects in any other material way the purpose or economics of this Agreement.

19.13 **Exhibits**.

Either Party may change the information for its notice addresses in Exhibit A at any time without the approval of the other Party. All other exhibits may only be changed by the mutual written consent of both Parties.

19.14 **Telephone Recording**.

Each Party to this Agreement acknowledges and agrees to the taping or electronic recording (“**Recording**”) of conversations between the Parties with respect to all scheduling, dispatch issues, real time operations and System Control Center, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this Agreement. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

19.15 **Forward Contract.**

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code (Title 11, United States Code).

19.16 **Governmental Approvals.**

Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and shall timely and properly pay its respective charges and fees in connection therewith.

19.17 **Compliance Information.**

Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

**ARTICLE 20
CONFIDENTIALITY AND PUBLICITY**

20.1 **Confidentiality**

For purposes of this Section 20.1, “**Disclosing Party**” refers to the Party disclosing information to the other Party, and the term “**Receiving Party**” refers to the Party receiving information from the other Party.

(a) Other than in connection with this Agreement, the Receiving Party will not use the Confidential Information (as defined below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Financing Parties, potential Financing Parties, legal counsel and accountants (collectively, “**Receiving Party’s Representatives**”), but only if such Receiving Party’s Representatives need to know the Confidential Information in connection with this Agreement. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care).

(b) As used in this Section 20.1, “**Confidential Information**” means all information that is furnished in connection with this Agreement to the Receiving Party or its Receiving Party’s Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party’s Representatives have access by virtue of this Agreement (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic

means and any information processed or stored on computers or other electronic media by PGE or on PGE's behalf)), or which concerns this Agreement, the Disclosing Party or the Disclosing Party's affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this Agreement. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement:

(i) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or Receiving Party's Representatives;

(ii) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(iii) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(c) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this Agreement, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this Agreement, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, excluding any archived documents, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this Agreement, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this Agreement that relates solely to this Agreement shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this Agreement, provided that such information remains Confidential Information and shall be treated as such.

(d) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party

shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information to make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure). Seller shall reasonably cooperate with PGE in seeking protection from the disclosure of Seller's Confidential Information.

20.2 **Naming of Facility.** Subject to Seller's approval, which such approval shall not be unreasonably denied, PGE may name the Project for marketing purposes. Notwithstanding the foregoing sentence, Seller shall not be required to change the name of the Project for regulatory permitting or licensing purposes.

20.3 **Publicity.** After the Execution Date, if either Party desires to issue a press release, such Party will notify the other Party of its intention. Upon receipt of such notice, the Parties will promptly (but in any event no later than ten (10) Business Days after such request) meet and negotiate the content of such press release in good faith. If the Parties fail to reach agreement on the content of such press release, the Party desiring such press release may unilaterally release a limited press release ("**Limited Press Release**") within the next sixty (60) days. Any such Limited Press Release may include, and is strictly limited to, only the following general details of this Agreement: (i) the name of the Project; (ii) reference to the fact that the Project is a [type] facility, (iii) contracted Generating Facility Nameplate Capacity and contracted Storage Facility Storage Capacity; (iv) the state within which the Project will be located; and (v) that the Project is under contract with a counterparty.

ARTICLE 21 NOTICES AND COUNTERPARTS

21.1 **Notices.**

21.1.1 All notices, requests, statements or payments shall be made to the addresses and persons specified in Exhibit A. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, e-mail (so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery), or other documentary form. Notice by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice by e-mail shall be deemed to have been received when delivered, so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, or courier. Notice by telephone shall be deemed to have been received at the time the call is received.

21.1.2 A Party may change its address by providing notice of the same in accordance with the provisions of Section 21.1.1.

21.1.3 Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit A to this Agreement. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

21.1.4 The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this Agreement.

21.2 **Counterparts.**

This Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument. The delivery of an executed counterpart to this Agreement by electronic means is effective for all purposes as the delivery of a manually-executed counterpart. This Agreement may be stored by the Parties electronically and the reproduction in tangible form of an electronically stored version of this Agreement will be deemed to be an "original" for all purposes.

IN WITNESS WHEREOF, the Parties have caused this Wholesale Renewable Energy and Storage Capacity Purchase and Sale Agreement to be duly executed as of the Effective Date. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

**PORTLAND GENERAL ELECTRIC
COMPANY**

[*Seller*]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

Notices

Portland General Electric Company (“PGE”)

All Notices:

Street: 121 SW Salmon Street
City: Portland, Oregon 97204
Attn: Power Contracts; 3WTCBR06
Phone: (503) 464-____
Email: _____
Duns: 00-790-9054
Federal Tax ID Number: 93-0256820

Invoices:

Attn: Accounts Payable
Phone: (503) 464-7126
Email: _____

Scheduling:

Attn: Manager Power Coordination
Phone: (503) 464-7241
Email: _____

Wire Transfer:

BNK: United States National Bank of Oregon-
Portland
ABA: 123000220
ACCT: #153600063512
NAME: Portland General Electric Company

Credit and Collections:

Attn: Credit Manager
Phone: (503) 464-_____
Email: _____

With additional Notices of an Event of Default to:

Attn: General Counsel
Phone: (503) 464-7822
Email: _____

Seller (“Seller” or “Name”)

All Notices:

Street: _____
City: _____ Zip: _____
Attn: Contract Administration
Phone: _____
Email: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:

Attn: _____
Phone: _____
Email: _____

Scheduling:

Attn: _____
Phone: _____
Email: _____

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

Attn: _____
Phone: _____
Email: _____

With additional Notices of an Event of Default to:

Attn: _____
Phone: _____
Email: _____

EXHIBIT B

Project Description

--	--	--

EXHIBIT C
Specified Amounts

EXHIBIT D
Facility Description

EXHIBIT E
Project Documents

EXHIBIT F

Site

EXHIBIT G

Start-Up Testing of Generating Facility

EXHIBIT H

Insurance

EXHIBIT I

Examples

Exhibit provided for example purposes only and may not be representative of information included in final contract

Market Index Settlement Price Example

(A)	(B)	(C)	(D) = (C)*(B)/Production Total
Hour	Production (MWh)	Market Index Price (\$/MWh)	Production-Weighted Market Index Price (\$/MWh)
HE01			
HE02			
HE03			
HE04			
HE05			
HE06			
HE07			
HE08			
HE09			
HE10			
HE11			
HE12			
HE13			
HE14			
HE15			
HE16			
HE17			
HE18			

HE19			
HE20			
HE21			
HE22			
HE23			
HE24			
Production Total			
Market Index Settlement Price			

Example Illustrating Determination of Amount Due to Seller under Section 6.2

EXHIBIT J
Intentionally Left Blank

EXHIBIT K
Litigation

EXHIBIT L
Forecast Methodology

EXHIBIT M

Optimal Conditions/ Generating Facility Nameplate Capacity

EXHIBIT N

Operational Hours and Mechanical Availability Methodology

EXHIBIT O

Commissioning Tests for Storage Facilities

EXHIBIT P
Guaranteed Round-Trip Efficiency

EXHIBIT Q
Operating Procedures

EXHIBIT R
Operating Restrictions

Appendix K

Credit Guidance

2023 All-Source RFP



Credit Requirements Guidance

A Bidder must provide reasonable assurance to PGE that PGE will be able to readily recover its actual damages in the event of default by the Bidder. All transactions are contingent upon the Bidder meeting and maintaining, during the term of the transaction, the credit requirements established by PGE's Credit Risk Management Department. All Bidders will be subject to credit review under PGE's internal guidelines by PGE's Credit Risk Management Department for qualification.

Each Bidder must provide performance assurance in a form and amount reasonably acceptable to PGE based on PGE's assessment of the Bidder's credit profile and the amount of expected financial exposure related to the bid.

Bidder Credit Eligibility Thresholds

All Bidders must be investment grade or otherwise meet PGE's credit eligibility thresholds. For investment grade Bidders, their long-term, senior unsecured debt must be rated BBB- or higher by Standard & Poor's or Fitch, BBB (low) or higher by DBRS, or Baa3 or higher by Moody's Investor Services, Inc. Non-investment grade Bidders must be guaranteed by an investment grade guarantor prior to the execution of definitive agreements. In addition, all bidders must secure the Bidder's performance obligations through a letter of credit from a qualified institution (defined below), in a form acceptable to PGE. Examples of acceptable forms are included below.

"Qualified Institution" means a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank which is acceptable to PGE, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholders' equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A- by S&P or A1 by Moody's, or an insurance company with assets of \$2 billion or greater, an A.M. Best financial strength rating of an A or greater and authorized to issue surety bonds in the state in which the project will be located.

If a Bidder is rated by two credit rating agencies, the lower of the two ratings will be assigned for purposes of determining creditworthiness. In the event that a Bidder is rated by multiple credit rating agencies and the ratings are both investment grade and non-investment grade, the majority opinion will be assigned.

Required Performance Assurances for New, Utility-Owned Resources

Winning bidders offering new, utility owned resources under BTA, APA and EPC (or similar) agreements must provide pre-COD performance assurances. The pre-COD performance assurance will include \$100/kW of nameplate capacity of collateral. The collateral will take the form of cash, or an irrevocable, transferable, standby letter of credit issued by a Qualified Institution (defined above) in a form and substance reasonably acceptable to PGE. The pre-COD performance assurance for EPC (or similar) will also include a payment and performance bond in a penal sum up to 100% of the contract price. The payment and performance bond must be issued by a Qualified Institution in a form and substance

reasonably acceptable to PGE. A payment and performance bond is not required for an APA-only bid.

In addition, non-investment grade bidders will be required to provide a guarantee from an investment grade guarantor. At time of initial short-list, non-investment grade bidders offering a new, utility-owned resource must provide a Guarantee Commitment Letter from the Bidder's guarantor.

In the event the Bidder experiences a material adverse change (i.e., is no longer creditworthy as defined above or as defined in the negotiated contract) during the term of the contract, the Bidder may be required to provide additional eligible performance assurances in one or more of the forms defined above.

The performance assurances for new, utility owned resources are summarized in the following table:

Timing	Performance Assurance
Pre-COD Amount	<ol style="list-style-type: none">1. \$100/kw of nameplate capacity collateral2. For EPC (or similar), payment and performance bond up to 100% of the contract price3. Guarantee
Post-COD Amount	No Post-COD collateral required

Required Performance Assurances for Power Purchase Agreements (PPA)

For long-term Power Purchase Agreements, PGE will require pre-COD (for facilities not yet constructed) and post-COD performance assurance to provide protection if the counterparty defaults under the PPA. PGE requires that Bidders include the cost of adequate, acceptable performance assurance as part of their bid proposal as shown below. Proposed exceptions or alternatives to these required performance assurances need to be explicitly stated in the Form PPA.

In addition, non-investment grade bidders will be required to provide a guarantee from an investment grade guarantor. Prior to execution of definitive agreements, non-investment grade bidders offering a new, third-party resource must be guaranteed by the Bidder's guarantor.

The performance assurances for power purchase agreements are summarized in the following table:

Timing	Performance Assurance
Pre-COD Amount	<ol style="list-style-type: none">1. \$200/kW of nameplate capacity collateral2. Guarantee
Post-COD Amount	\$100/kW of nameplate capacity collateral

Attachment 1

GUARANTY COMMITMENT LETTER

(Must be on letterhead of Bidder's credit support provider)

Portland General Electric Company

121 SW Salmon Street

1 World Trade Center - 1301

Portland, Oregon 97204

Attn: Credit Dept.

Dear Sirs or Madams:

_____, ("Bidder") (insert Bidder name) is submitting a bid in response to the Portland General Electric Company's 2023 All-Source Request For Proposals ("RFP"). Bidder is the _____ (insert nature of relationship, e.g., wholly owned subsidiary, partially owned subsidiary, affiliate, etc.) of the undersigned. The undersigned will directly benefit from the bid submitted by Bidder into the RFP. And the undersigned and Bidder have their own, separate legally enforceable arrangement with respect to the undersigned's promise set forth in this letter.

The undersigned promises and agrees that, if a Bid by Bidder is selected, that we will at that time issue an unconditional guaranty in form and substance consistent with PGE's Form Parent Guaranty, and that we will guarantee all obligations of payment and performance of Bidder to you as our independent obligation, plus expenses of enforcing the guaranty.

We understand that said guaranty is a required element in evaluating the Bidder's bid and that the execution and delivery of the guaranty is a condition precedent to you entering into an agreement with Bidder. We also understand that you are under no obligation to enter into any agreement with Bidder, under the RFP or otherwise.

Yours truly,

(Name of guarantor)

(Name of authorized officer)

Attachment 2

LETTER OF CREDIT COMMITMENT LETTER

(Must be on letterhead of Bidder's letter of credit issuer)

Portland General Electric Company

121 SW Salmon Street

1 World Trade Center - 1301

Portland, Oregon 97204

Attn: Credit Dept.

Dear Sirs or Madams:

_____, ("Bidder") (insert Bidder name) is submitting a bid in response to the Portland General Electric Company's 2023 All-Source Request For Proposals ("RFP"). The undersigned promises that, should any bid submitted by Bidder in the RFP be selected for negotiations, that we will issue an irrevocable standby letter of credit in a form reasonably acceptable to you up to a maximum amount of \$_____.

We understand that the execution and delivery of the letter of credit is a condition precedent to you entering into an agreement with Bidder. We also understand that you are under no obligation to enter into any agreement with Bidder, under the RFP or otherwise.

Yours truly,

(Name of letter of credit issuer)



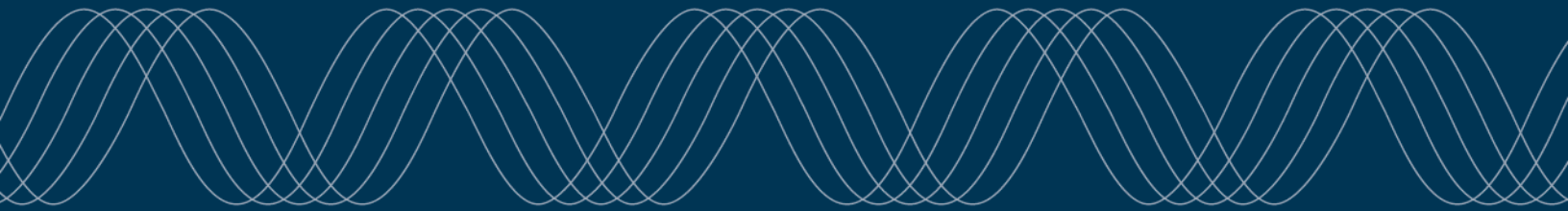
PGE Corporate Headquarters

121 S.W. Salmon Street | Portland, Oregon 97204

portlandgeneral.com

Appendix L

Non-Disclosure Agreement



2023 All-Source RFP



Mutual Confidentiality Agreement

This Mutual Confidentiality Agreement (the "**Agreement**"), effective as of [DATE] (the "**Effective Date**"), is entered into by and between [COUNTERPARTY NAME] ("Counterparty"), a [STATE OF ORGANIZATION] [ENTITY TYPE] having its principal place of business at [INSERT ADDRESS] and Portland General Electric Company ("PGE"), an Oregon corporation having its principal place of business at 121 SW Salmon Street, Portland, OR 97204 (together, the "**Parties**", and each, a "**Party**").

WHEREAS, PGE is in the process of acquiring electricity and capacity resources through the issuance of a 2023 All-Source Request for Proposal (the "**RFP**").

WHEREAS, Counterparty desires to participate in the RFP as a bidder (the "**Purpose**").

WHEREAS, the Parties desire to share certain information that is non-public, confidential or proprietary in nature in furtherance of the Purpose.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, the Parties agree as follows:

1. Confidential Information. Except as set forth in Section 2 below, "**Confidential Information**" means all non-public, confidential or proprietary information disclosed on or after the Effective Date, by either Party (a "**Disclosing Party**") to the other Party (a "**Recipient**"), or to any of such Recipient's or its affiliates' employees, officers, directors, partners, shareholders, agents, attorneys, accountants or advisors (collectively, "**Representatives**"), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," which may include:

(a) all information concerning the Disclosing Party's and its affiliates', and their customers', suppliers' and other third parties' past, present and future business affairs including, without limitation, finances, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies;

(b) the Disclosing Party's unpatented inventions, ideas, methods and discoveries, trade secrets, know-how, unpublished patent applications and other confidential intellectual property;

(c) all designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing;

(d) any third-party confidential information included with, or incorporated in, any information provided by the Disclosing Party to the Recipient or its Representatives; and

(e) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials (the "**Notes**") prepared by or for the Recipient or its Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing.

Any Confidential Information disclosed orally shall be clearly identified as such by Disclosing Party at the time it is disclosed.

2. Exclusions from Confidential Information. Except as required by applicable federal, state or local law or regulation, the term "Confidential Information" as used in this Agreement shall not include information that:

(a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives;

(b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by a legal, fiduciary or contractual obligation to the Disclosing Party;

(c) was known by or in the possession of the Recipient or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of the Disclosing Party pursuant to this Agreement; or

(d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

3. Recipient Obligations. The Recipient shall:

(a) protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose;

(c) not disclose any such Confidential Information to any person or entity, except to the Recipient's Representatives who:

(i) need to know the Confidential Information to assist the Recipient, or act on its behalf, in relation to the Purpose or to exercise its rights under the Agreement;

(ii) are informed by the Recipient of the confidential nature of the Confidential Information; and

(iii) are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement.

(d) be responsible for any breach of this Agreement caused by any of its Representatives.

4. Security. Recipient will maintain and comply with administrative, technical and physical safeguards that are designed to protect the security and integrity of the Confidential Information, including in connection with any transfer, communication, remote access or storage of the Confidential Information as permitted or required under this Agreement. Recipient will promptly notify the disclosing Party of any unauthorized disclosure or use of the Disclosing Party's Confidential Information.

5. Permitted Disclosure. Any disclosure by the Recipient or its Representatives of any of the Disclosing Party's Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order or other legally supported data request issued by a court or governmental agency of competent jurisdiction (a "**Legal Order**") shall be subject to the terms of this Section. Prior to making any such disclosure, the Recipient shall provide the Disclosing Party with:

(a) to the extent reasonably possible and not prohibited by law, written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and

(b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Recipient remains subject to a Legal Order to disclose any Confidential Information, the Recipient (or its Representatives or other persons to whom such Legal Order is directed) shall disclose no more than that portion of the Confidential Information which, such Legal Order specifically requires the Recipient to disclose. Recipient shall not be in breach of this Agreement or liable to Disclosing Party for any disclosure made pursuant to this Section 5 (Permitted Disclosure).

Notwithstanding anything to the contrary in this Agreement, PGE may disclose Confidential Information (a) to the OPUC pursuant to any Protective Order(s) that may be issued by the OPUC in connection with the RFP or any cost recovery proceedings related to resources or products acquired pursuant to the RFP, (b) to the independent evaluator retained by PGE for the RFP, and (c) to comply with the disclosure requirements set forth in OAR 860-089-0500 (Final Shortlist Acknowledgement and Result Publication).

6. Return or Destruction of Confidential Information. At any time during or after the term of this Agreement, at the Disclosing Party's written request, the Recipient and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed; provided, however, that Recipient may keep copies of the Confidential Information for legal compliance, systematic backup or archival purposes, and will hold such copies subject to the terms of this Agreement. In addition, the Recipient shall also destroy all copies of any Notes created by the Recipient or its Representatives and certify in writing to the Disclosing Party that such copies have been destroyed; provided, however, that Recipient may keep copies of the Notes for legal compliance, systematic backup or archival purposes, and will hold such copies subject to the terms of this Agreement.

7. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall expire ~~two-five~~ (5~~2~~) years from the Effective Date. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement for a period of one (1) year from the date of such expiration or termination, even after the return or destruction of Confidential Information by the Recipient.

8. No Transfer of Rights, Title or Interest. Each Party hereby retains its entire right, title and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest whatsoever to the Recipient or any of its Representatives.

9. No Other Obligation. The Parties agree that neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. Either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise and may pursue a similar purpose without the involvement of, or liability to, the other party.

10. Remedies. Each Party acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Agreement by such Party or its Representatives. Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the non-breaching Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

11. Limitation of Liability.

(a) No Consequential or Indirect Damages. IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) Maximum Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED ~~FIVE-TWO MILLION HUNDRED THOUSAND~~ DOLLARS (\$52,000,000.00). THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

12. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Oregon. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Oregon in each case located in the city of Portland and County of Multnomah, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or *forum non conveniens*. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

13. Attorney Fees. In the event that any party institutes any legal suit, action or proceeding, including arbitration, against the other party to enforce the covenants contained in this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable and actual attorneys' fees and expenses and court costs.

14. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third day after

the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section).

15. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.

16. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

18. Assignment. Neither Party may assign any of its rights hereunder without the prior written consent of the other Party. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning Party of any of its obligations hereunder. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

19. Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

Portland General Electric Company

[Counterparty]

By _____

By _____

Name:

Name:

Title:

Title:



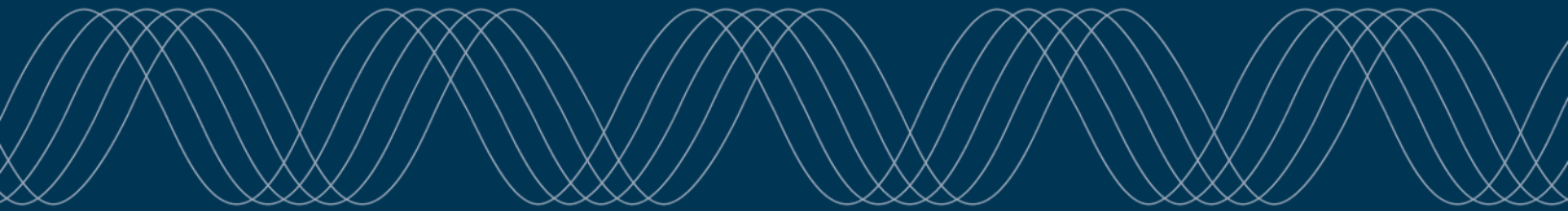
PGE Corporate Headquarters

121 S.W. Salmon Street | Portland, Oregon 97204

portlandgeneral.com

Appendix N

Scoring and Modeling Methodology



2023 All-Source RFP



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Scoring Methodology

1. Overall Analysis Process

PGE’s evaluation and scoring process is designed to account for the unique attributes of several resource types and determine the resource portfolio that offers the best combination of cost and risk for PGE customers. PGE intends to use combined Clean Energy Plan and Integrated Resource Plan (CEP/IRP) models with select modifications to evaluate proposed resources and to work closely with the IE to validate that the evaluation criteria, methods, models, and other processes have been applied consistently and appropriately to all bids. Any modifications to PGE’s CEP/IRP models are discussed in detail in the analysis sections below.

The following diagram illustrates the anticipated key steps in the analysis process, and the discussion below provides additional detail on the required modeling and scoring within each step.

Figure 1: 2023 All-Source RFP Analysis Process



2. Minimum Bidder Requirements Screen

PGE intends to employ a performance screen as the first step in the RFP evaluation process to assess bid conformance with the minimum bidder requirements for this solicitation. Bids that do not meet all of the minimum bidder requirements will not be considered for the initial shortlist and will not receive a price score. If a bid is found to be non-conforming, PGE will document why bids did not pass the minimum bidder requirements and will provide information to the bidder. PGE may also provide such highly confidential information upon request to Commission staff and docket participants that have signed a modified protective order. A description of the various elements of the minimum bidder requirements is included in Table 1 below.

[For bidders that fail to meet one or more minimum requirements during any part of the requirements screen, PGE will provide a cure period during which the bidder can provide evidence of how they've met the requirement.](#)

Table 1: Minimum Bidder Requirements

Minimum Bidder Requirements	
Entity Requirement	As applicable, Bidders must be authorized under the law to sell power and be able to schedule power and operate according to industry standards established by the Federal Energy Regulatory Commission (FERC), Western Electricity Coordinating Council (WECC), and the North American Energy Reliability Council (NERC), and/or other applicable regulatory body or government agency.
Financing Requirement	As applicable, Bidders must provide a reasonable plan to obtain project financing. Bidders who are unable to internally or balance sheet finance the proposed resource (supported by appropriate financial statements) must provide evidence of a good faith commitment from a financial institution or lender prior to placement on PGE’s final shortlist.
Technology Eligibility	<p>Resource core technologies must be commercially proven and deployed at large scale within the North American utility industry. Renewable resources must be RPS eligible. Dispatchable resources must be non-emitting technologies that can dispatch when called upon.</p> <p>For solar renewable energy resources, Bidders are responsible for ensuring and demonstrating that solar panels associated with any bid are not sourced from listed entities on the Department of Commerce - Bureau of Industry and Security’s Entity List to ensure that projects do not include polysilicon produced with forced labor.</p> <p>For energy storage facilities, Bidders must provide a list of major US installations of this the storage technology proposed. Storage medium, chemistry, and power conversion systems of such listed these installations must be of like kind to what is being proposed. Such installations must be in proven commercial operation, beyond R&D demonstrations.</p>
Resource Online Date	<p>Dispatchable All components of resources must be which are online no later than by 12/31/2025 to and support PGE’s identified 2026 capacity need, will be prioritized. For example, in the instance of a solar and storage resource, both the solar and storage components must be online by 12/31/2025.</p> <p>PGE has made an exception for long construction lead time technologies, which PGE is defining as resources with a standard</p>

	<p>construction cycle¹ of greater than four years (such as pumped hydro resources). PGE may consider these long lead-time resources if they propose a unique value to customers.² PGE is prepared to accept bids for long construction lead time resources, as long as all components of those resources come online by <u>12/31/2029</u>, the end of the 2023 CEP/IRP action plan window.</p> <p><u>Renewable resources must be online by 12/31/2027.</u> PGE has will also made an exception for <u>consider</u> multi-phase projects, as long as all phases come online by 12/31/20276, <u>with the first phase coming online by 12/31/2025</u>. Phases that come online after 12/31/2025 will not count towards PGE’s identified 2026 capacity need.</p>
Qualifying Product	<p>PGE shall be the offtaker for all output from the resource or portion of the resource bid into this RFP. Resources must include all power attributes associated with the resource, including associated renewable energy credits, environmental attributes, energy benefits, and capacity benefits.</p> <p>Bidder is responsible for ensuring RECs generated by the resource are established in WREGIS.</p>
Nameplate Requirement	<p>Renewable resources must be large enough to qualify for contracting under PGE’s Schedule 202 for qualifying facilities.³ Solar resources must be larger than 3 MW and all other facilities must be larger than 10 MW.</p>
Term Length	<p>For bids including a power purchase agreement, PGE requires a 15-year minimum term and a 30-year maximum term for those agreements.</p>
Site Control	<p>Bidders must demonstrate dependable site control, for both the location of the resource and any gen-tie path that is required. At the time of bid submission, Bidders must possess at least one of the following for the resource and any generation tie path:</p> <ul style="list-style-type: none"> • title to the site • an executed lease agreement • an executed easement

¹ Construction lead time based on typical construction activities and does not include delays due to supply chain constraint

² PGE will also consider other long lead-time technologies that satisfy PGE’s eligibility requirements, have been commercially proven, and can be shown to require additional construction time beyond what is possible by 12/31/2025.

³ This requirement is consistent with OAR 860-089-0250(4).

	<ul style="list-style-type: none"> an executed option agreement applicable to a minimum of 80% of the project site <p>The site control documents must reflect the resource type.</p>
Permitting ⁴	<p>Bids must meet the permitting requirements set forth in Exhibit A, which lists environmental permits and surveys commonly required for construction and operation of an energy project. For each permit and survey, the chart illustrates when the permit must be obtained, or survey must be completed - by bid, final shortlist, or construction - for different technologies. "By bid" requirements necessitate that the resource receives the permit from the authorizing agency or the survey has been completed by the time of bid submission. "By final shortlist" requirements necessitate that the resource receives the permit from the authorizing agency prior to the Commission's acknowledgement of PGE's final shortlist. "By construction" requirements necessitate that the resource receives the permit from the authorizing agency before construction begins.</p> <p>In the event a specific permit is not required at all or during this RFP process for the resource(s) that are bid into this RFP, the Bidder may provide a narrative explanation on the bid form regarding why it is not applicable.⁵</p>
Acceptable Delivery Points	<p>PGE will accept delivery within PGE's balancing authority area and at BPAT.PGE. PGE will not accept delivery at Pelton Round Butte or at PacifiCorp West.</p> <p>The BPAT.PGE Point of Delivery is associated with the following substations or "sinks":</p> <ul style="list-style-type: none"> PGE Contiguous Pearl 230 kV (Sherwood)

⁴ PGE will allow Bidders to submit a narrative explanation if they are unable to meet the permitting matrix timeline included in this RFP. PGE views the permits and associated timelines as key to reducing risk and retains the discretion - to be discussed with the IE - to determine whether the explanation provided has merit.

⁵ PGE will allow Bidders to submit a narrative explanation if they are unable to meet the permitting matrix timeline included in this RFP. PGE views the permits and associated timelines as key to reducing risk and retains the discretion - to be discussed with the IE - to determine whether the explanation provided has sufficient merit to allow the bid to proceed.

	<ul style="list-style-type: none"> • McLoughlin 230 kV • Keeler 230 kV (St. Marys) • Rivergate 230 kV • Bethel 230 kV ⁶ • Troutdale 230 kV (Blue Lake)
Interconnection	<p>Bids must meet the following interconnection requirements:</p> <p>An active generation interconnection request in the transmission provider’s interconnection queue.</p> <p>A completed system impact study by the transmission provider.</p> <p>If interconnection involves a 3rd party other than the transmission provider, the bid must also include an interconnection request to the 3rd party and all associated studies.</p> <p>Resources located on PGE’s system must be studied as Network Resource Interconnection Service.</p> <p>Resources located off-system may be studied as Energy Resource Interconnection Service or Network Resource Interconnection Service.</p> <p>Bidders proposing to interconnect a resource within PGE’s Balancing Authority Area will need to include all incremental costs to deliver, or sink, energy from the resource to PGE’s load in its bid. Bidders may determine these costs by requesting Network Resource Interconnection Service and Network Integration Transmission Service under PGE’s Open Access Transmission Tariff (OATT) from PGE’s Transmission and Reliability Services Department (T&RS) or Bidders may request Energy Resource Interconnection Service and Point-to-Point Transmission Service under PGE’s OATT from T&RS. Either process will enable T&RS to study whether any system upgrades are needed to accommodate transmission service for the bid. Questions concerning the various types of Interconnection and Transmission Service available under PGE’s OATT should be directed to T&RS.</p>

⁶ At this time, the Bethel 230 kV POD has been determined to have insufficient available capacity and is unavailable for new transmission service requests. However, Bidders that have already been granted long-term service at this POD may use this POD.

<p>Transmission Requirements⁷</p>	<p>Bids including renewable resources must have an achievable plan to meet the following transmission requirements:</p> <p>Eligible transmission service products include:</p> <ul style="list-style-type: none"> • long-term firm transmission service; • long-term conditional firm bridge, number of hours; or • long-term conditional firm reassessment, number of hours. <p>Bid must include one of the eligible transmission service products described above that is equivalent to at least 80% of the resource’s interconnection limit. The eligible transmission service must originate at the POR/POI and provide delivery to one of the acceptable points of delivery, defined above, prior to the resources commercial operation date.</p> <p>Bids relying on BPA for transmission service are required to have either: 1) previously granted eligible transmission service, or 2) an eligible and active OASIS status Transmission Service Request (TSR) participating in the BPA TSR Study and Expansion Process.</p> <p>Long-term transmission rights must match the duration of the contract term or include rollover rights.⁸</p> <p>PGE’s evaluation process will determine if there are additional costs or risks to deliver the resource to PGE load.</p> <p>If a bid includes a TSR that utilizes Newpoint as the POR, the TSR must reference the specific Generation Interconnection Request number for the resource in the bid.</p> <p>Bids including dispatchable resources must have an achievable plan to meet the following transmission requirements:</p> <p>Bid must include long term firm transmission rights for 100% of the resource’s interconnection limit. The long-term firm transmission</p>
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⁷ PGE appreciates that timelines for obtaining such transmission can be strenuous and lengthy and invites bidders to include clear and executable paths to procuring transmission service (including study process milestones and reference to public study results for similar projects). Any clear and executable plan must meet the transmission product and quantity requirements specified in this section.

⁸ PGE acknowledges that timelines for obtaining such transmission can be strenuous and lengthy and invites Bidders to include a narrative describing clear and executable paths to procuring transmission service (including study process milestones and reference to public study results for similar projects). Any plan must meet the transmission product and quantity requirements specified in this section.

	<p>service must originate at the resource POR/POI and provide delivery to one of the acceptable points of delivery, defined above, prior to resource commercial operation date.</p> <p>Bid relying on BPA for transmission service are required to have either previously granted eligible transmission service or have an eligible and active OASIS status TSR participating in the BPA TSR Study and Expansion Process.</p> <p>Long-term transmission rights must match the duration of the contract term or include rollover rights.</p> <p>PGE’s evaluation process will determine if there are additional costs or risks to deliver the resource to PGE load. If a Bid includes a TSR that utilizes Newpoint as the POR, the TSR must reference the specific Generation Interconnection Request number for the resource in the bid.</p>
Integration	<p>For resources located outside of PGE’s Balancing Authority Area, Bidder will procure, and PGE will reimburse Bidder for all integration services from an entity, mutually agreed upon by the parties, required to ensure delivery of energy as scheduled to the Delivery Point. Integration services include, but are not limited to, generation imbalance, variable energy resource balancing service and any EIM costs associated with interconnection. Integration services do not include ancillary service costs associated with the transmission provider’s provision of firm transmission service.</p>
Labor Requirement	<p>Union labor must be utilized for construction activities related to the resource and must include a Project Labor Agreement requirement in any related executed Engineering, Procurement and Construction Agreements, applicable to all parties.</p> <p>Additionally, bidders must meet the requirements set forth in ORS 757.306 for projects built in Oregon. For projects built both inside and outside of the state, all labor requirements established for the highest level of tax credit for the ITC and PTC must be met.</p> <p>The bidder must require that all parties involved in the construction of the resource have policies in place that are designed to prevent workplace harassment and discrimination as well as policies in place that are designed to promote workplace diversity, equity and inclusion of communities who have been traditionally underrepresented in the renewable energy sector including, but not limited to, women, veterans and Black, Indigenous and People of Color</p>

	<p>Additionally, entities or subcontractors that are subject to any of the following are ineligible for contract:</p> <ul style="list-style-type: none"> • Any entity that has been debarred by, or whose principal officer is debarred by, a municipal, state, or federal government. • Any entity listed by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860 as ineligible to receive a contract or subcontract for public works. • Any entity whose violation of PGE’s Responsible Contractor policy has resulted in a contract default in the past 3 years.
Accepted equipment manufacturers for utility owned	For structures that contemplate resource ownership, all major equipment manufacturers must be PGE preferred vendors. A list of PGE’s preferred vendors is supplied in Appendix M, PGE’s technical specifications.
Service agreement requirements for utility ownership structures	For structures that contemplate resource ownership, bids must include quoted vendor costs for long-term service agreements (LTSA) for a minimum of five (5) years. For battery-energy storage resources, LTSAs must include commitments to maintain the capacity performance through augmentation or alternative mechanisms.
Usable Energy Storage Bidding	Bidders are required to bid energy storage resources on a contract capacity basis and must account separately for minimum and maximum system state of charge. PGE will only accept bids that express cost and performance on a usable state of charge basis that allows PGE to dispatch the resource from a 0%-100% state of charge without commercial or performance consequence.

3. Scoring Methodology

Consistent with OAR 860-089-0400(2), all bids that pass PGE’s minimum bidder requirements will be scored and ranked based on price factors. Price scores will be based on prices submitted by Bidders, the forecasted performance of the resource, and the associated real-levelized cost and benefit of the bid.

4. Price Scoring

PGE’s price scoring will utilize models and methodologies consistent with the 2023 CEP/IRP. Revenue requirement modeling will determine the bid cost. Aurora will be used to calculate energy values. Sequoia will be used to determine the capacity value. Results from GridPath will provide flexibility value assessments. Some of these models required modifications for RFP evaluation purposes; those modifications are further detailed in each section below.

a. Bid Cost Determination

A bid's cost reflects the total cost, fixed and variable, associated with the resource's delivery of energy, capacity, and ancillary services at its forecast economic dispatch. PGE will utilize a revenue requirement model in Excel over the economic life of the asset to calculate the total offer cost, expressed on a present-value basis. A real levelized net present value is the value that when escalated at the annual inflation rate, has the same net present value as the original total offer cost. The model will consider the unique fixed and variable costs associated with each resource.

For bids that contemplate a power purchase agreement (PPA), a bid's fixed cost will include (if applicable) all forecast fixed payments, capacity charges, wheeling costs, integration costs, ancillary services, PGE system upgrade costs, and costs related to imputed debt (described in more detail below). Variable costs for PPAs will include all energy payments, additional variable operating and maintenance (O&M) costs, line losses, emission costs passed onto the buyer, and start-up charges, if applicable. PGE will determine the magnitude of a bid's variable costs by the bid's simulated dispatch against forecast market prices developed using the Aurora modeling, forecasting, and analysis software.

Imputed Debt - Rating agency Standard & Poor's (S&P) considers the fixed financial obligations from long term PPAs to be considered debt equivalent.

S&P's methodology takes the capacity portion of the PPA and calculates the net present value of future payments using a company-specific discount rate and applying an analytically- determined risk factor between 25%-100%. This imputed debt is then added to the Company's total outstanding debt as part of the financial assessment.

In a comprehensive RFP evaluation, there should be comparability between bids to build new generation and bids to purchase power from third parties. Adding an imputed debt equivalent to PPA bids allows for a fair risk assessment of all bids. Table 2 below provides the calculated imputed debt adder for PPAs by contract length and COD. The Table assumes a 50/50 equity to debt ratio, and is

based on a fixed price PPA with a risk factor of 25% and a capacity payment factor of 50% of the total PPA payment.

Table 2. Imputed Debt Adder by Contract Length and COD

Contract Length (Years)	Adder (2026 COD)	Adder (2027 COD)
15	2.92%	2.86%
20	3.87%	3.79%
25	4.83%	4.74%
30	5.82%	5.70%

For bids that contemplate a utility ownership structure, a bid's fixed costs will include total depreciation, salvage, return, income taxes, deferred income taxes, property taxes, fixed O&M costs, wheeling charges, and ancillary services less any tax credit benefits. A bid's variable costs will include all fuel costs, variable O&M costs, emissions costs, and start-up costs, less any tax credit benefit and net of the transferability discount (described in more detail below).

Transferability discount - The Inflation Reduction Act allows the transferability, or sale, of ITCs and PTCs. PGE expects to take advantage of this opportunity and will sell future generated energy tax credits. The

sale of credits will come with a discount (i.e., sale of \$1 of credits will return less than \$1). PGE will incorporate an estimated discount on tax credit benefits in the analysis of resources with utility ownership structures.

To evaluate bids containing different resource characteristics on a comparable basis, prices submitted by the Bidder may be subject to adjustments, and adjustments may also be required throughout the evaluation process. For consistency, PGE intends to assess all bids the BPA reserves rate. Renewable resources will be assessed BPA's variable energy resource balancing services, and dispatchable resources will be assessed dispatchable energy resource balancing services. Examples of other adjustments include applying applicable interconnection costs captured in interconnection facilities studies, adjusting for ancillary service rate changes, and altering assumed project costs based on redlines to technical specifications.

b. Energy Value Determination

A resource's energy value reflects the value of energy generated throughout the resource's economic life or term. To calculate the energy value, PGE will forecast resource production and utilize the reference case market price forecast from the 2023 CEP/IRP, inclusive of available natural gas price forecast updates. The production value will be based on Bidder provided generation information. In the instance of storage and dispatchable resources, PGE will simulate resource dispatch using the Aurora production cost simulation tools deployed in the CEP/IRP. Energy value for the duration of the resource's life or term is expressed on a present-value basis, levelized using annuity methods, and included in the resource's total levelized value. To evaluate energy value risks, PGE will conduct energy value sensitivities using multiple price curves within portfolio analysis.

c. Capacity Value Determination

PGE is facing an upcoming capacity deficit in 2026 and requires capacity products to otherwise displace the need to contract with or construct new generating facilities. Individual resource capacity values will be calculated as the product of the bid's capacity contribution and the avoided capacity cost. PGE's avoided capacity cost will utilize the real-levelized cost, net of wholesale revenues and flexibility value, adjusted for effective load carrying capability (ELCC) of a four-hour battery as depicted in the 2023 CEP/IRP. For additional perspective, PGE will also use the average cost of dispatchable capacity from bids in this RFP as a proxy for avoided capacity cost as a portfolio sensitivity.

Individual capacity contributions will be calculated using Sequoia. Sequoia is a loss-of-load probability model that assesses both capacity need and capacity contribution of potential incremental resources. The model uses a Monte Carlo module to construct thousands of plausible weeks of load and resource conditions. It then evaluates these weeks independently in a dispatch module that optimizes the generation from dispatchable resources across all hours of the week to minimize the reliability objective function. For the CEP/IRP, a resource-adequate system must average 2.4 hours of lost load or fewer per season (2.4 LOLH), an interpretation of one outage every 10 years. Sequoia has an Excel interface with a Python and General Algebraic Modeling System (GAMS) back end. It also requires a license to the

Gurobi solver to achieve adequate performance. Further details on Sequoia were included in Appendix H.3 of the 2023 CEP/IRP.

As discussed above, PGE will evaluate multiple transmission products as part of this RFP. Depending on the product selected, PGE will adjust the capacity value of the resource to account for the product’s reliability, which is described in more detail in the chart below.

Table 3: Impacts to Capacity Value Based on Transmission Products

Impacts to Capacity Value Based on Transmission Products	
Long-Term Firm	<ul style="list-style-type: none"> When determining capacity contribution, the maximum resource output will be limited to the quantity of long-term firm rights (no less than 80% of interconnection limit). No capacity value will be attributed to the portion of the resource’s interconnection limit that is relying on short-term firm, if any.
Conditional Firm Bridge	<ul style="list-style-type: none"> When determining capacity contribution, the maximum resource output will be limited by the amount of conditional firm bridge rights (no less than 80% of interconnection limit). For the purposes of capacity contribution calculations, generation delivered by conditional firm bridge will be assumed to be curtailed. Specifically, resources on conditional firm bridge will also have their output curtailed for 50% of annual curtailment hours as identified and reserved for use by BPA. The model will assume that these curtailments happen during PGE’s approximate times of highest need. Upon the forecasted completion of transmission upgrades necessary to convert conditional firm bridge service into long-term firm service, a resource’s forecasted curtailment conditions will be removed. If BPA’s cluster study results are not available to indicate the maximum number of curtailed hours, PGE will use the average assessed hours from the previous study. No capacity value will be attributed to the portion of the resource’s interconnection limit that is relying on short-term firm, if any.
Conditional Firm Reassessment	<ul style="list-style-type: none"> Due to the unpredictable long-term nature of this product as discussed in the transmission section above, PGE will not attribute any capacity value to bids relying on conditional firm reassessment.

d. Flexibility Value Determination

Flexibility value was included in the 2023 CEP/IRP to estimate the value a resource brings to PGE’s portfolio by responding to forecast errors, enabling fast ramping, and meeting reserve requirements. PGE estimated these values using Blue Marble Analytics’ GridPath model. GridPath is a multi-stage optimal commitment and dispatch model that minimizes total system operating costs subject to various system- and generator-level operational constraints. The enforced constraints include generator dispatch requirements and limits such as minimum up- and down-times, minimum loading

levels, ramp rate limits, etc., as well as system-level hourly market availability and reserve requirements, e.g., spinning reserves, regulation, load following, etc.⁹

For resource flexibility values in the 2023 All-Source RFP, PGE will rely on flexibility values from GridPath as detailed in the 2023 CEP/IRP. These values will be adjusted based on the size of each resource evaluated. Below are the flexibility values for 100 MW resources included in the 2023 CEP/IRP.

Table 4: Flexibility Value from the 2023 CEP/IRP

Flexibility Value (2026\$/kW-yr)	
2-hour Battery	\$8.35
4-hour Battery	\$9.77
6-hour Battery	\$10.68
8-hour Battery	\$11.78
10-hour Pumped Storage	\$11.47

e. Offer Price Value-to-Cost Evaluation

PGE will evaluate all renewable resource bids against a value-to-cost binary metric. The value-to-cost metric evaluates whether a resource’s costs are exceeded by a resource’s forecasted value under Reference Case conditions considering only the resource’s forecasted energy, capacity, and flexibility values. Bids will be considered to have a ‘True’ value-to-cost metric if the resource’s forecasted levelized benefit exceeds their forecasted levelized cost. The formula below illustrates how the metric will be assessed for renewable resource bids.

Renewable Resources’ Value-to-Cost Binary Metric is True if:

$$\textit{Levelized Resource Cost} < \textit{Levelized Energy Value} + \textit{Levelized Capacity Value} + \textit{Levelized Flexibility Value}$$

The value-to-cost evaluation will be unique for each resource evaluated by PGE and will assess a higher score for resources that provide more value to PGE customers due to the resource’s generation profile. For this reason, it is possible that a lower-priced resource will not pass the economic evaluation while a

⁹ For a more detailed description of GridPath, please consult **External Study IV. Flexibility Study** in PGE’s 2023 CEP/IRP at page 675.

higher-priced resource will pass the economic evaluation due to increased resource value, such as by providing higher capacity contribution or more valuable energy production.

This metric may inform future regulatory reporting but will not impact points allocated to projects as part of the scoring process.

f. Allocation of Price Score Points

Once the cost of each bid is determined it will be netted against the levelized energy, capacity, and flexibility value associated with the bid. This net cost will be expressed in real levelized \$/MWh for renewable bids and real levelized \$/kW-mo for dispatchable bids. Each bid’s component cost and benefits will be converted into a cost-to-benefit price score ratio. Price scoring points will be allocated on a scaled basis, with 1,000 points allocated to the best price ratio. The allocation system is illustrated by the example below.

Table 5: Price Score Point Allocation Example

Price Score Point Allocation Example					
A	B	C	D	E	F
	Total Cost	Total Value	Ratio of Cost to Benefit	Lowest Ratio	Points
			B/C	Min(D)	1,000*(E/D)
Bid 1	40	50	0.8	0.73	913
Bid 2	35	48	0.73	0.73	1,000
Bid 3	15	20	0.75	0.73	973
Figures are fictitious and for example purposes only					

5. Initial Shortlist

Projects that meet the minimum bid criteria outlined in Section 2 of this document and perform well on price factors will be placed on the initial shortlist, which identifies that the bid warrants further consideration by PGE. Initial shortlist candidates will be notified by PGE.

6. Best and Final Offer Request & Final Shortlist Eligibility Screening

Initial shortlist candidates will be contacted by PGE and requested to provide their best and final offer. PGE will also ask that they redline technical specifications (if they have not already done so) and provide updates on pricing, permitting processes, interconnections studies, and the cluster study process. This new information will be evaluated to ensure the bid meets the eligibility requirements for the final

shortlist, and all relevant updates will be incorporated into the portfolio analysis. A description of the additional elements for final shortlist eligibility are included in Table 6 below.

Table 6: Final Shortlist Eligibility Screening

Final Shortlist Eligibility Screening	
Credit	<p>Bidders must meet PGE’s credit eligibility thresholds prior to Commission’s acknowledgement of PGE’s final shortlist.</p> <p>For investment grade Bidders, their long-term, senior unsecured debt must be rated BBB- or higher by Standard & Poor’s and Fitch, BBB (low) or higher by DBRS, or Baa3 or higher by Moody’s Investor Services, Inc.</p> <p>For non-investment grade Bidders, they must demonstrate that a qualified institution will secure the Bidder’s performance obligations through a letter of credit or guaranty, in a form acceptable to PGE.</p> <p>Additional detail on PGE’s credit requirements is included in Appendix K.</p>
Site Control	Bidders will be required to demonstrate site control for 100% of the project site.
Interconnection	To qualify for the final shortlist, a bid must have a completed facilities study <u>agreement bywith</u> the transmission provider.
Reasonable adherence to PGE technical specifications for utility ownership structures	For structures that contemplate resource ownership, concurrent with supplying the best and final offer, the Bidder must supply redlines to the relevant PGE technical specifications.

7. Portfolio Analysis

Consistent with the methodology in PGE’s 2023 CEP/IRP, PGE will utilize ROSE-E for portfolio analysis for this RFP. ROSE-E is a portfolio analysis tool that generates optimal portfolios according to a specified objective. In doing so, ROSE-E creates various cost and risk metrics that enable comparison across portfolios. For this RFP, ROSE-E will forecast the long-term economic performance of bids, both in isolation as well as when combined, allowing a comprehensive evaluation of bids that ensures the final shortlist is in the best long-term interests of customers. ROSE-E was extensively described and vetted in LC 73; for a full description of updates and improvements to the model that have been made since then,

please refer to PGE’s 2023 CEP/IRP.¹⁰ While the core of ROSE-E remains in this RFP, several important changes have been made to the model to answer questions relevant to this RFP.

ROSE-E’s capacity expansion will be set to meet the carbon reduction targets established in Oregon House Bill (HB) 2021. In an CEP/IRP setting, ROSE-E ensures the system remains capacity adequate and in compliance with policy mandates by determining the optimal size and timing of additions from a list of proxy resources available to PGE.¹¹ Off-system proxy resources were subject to transmission constraints, so in order to provide sufficient resources to meet capacity needs, two generic on-system resources (Generic capacity and Generic VER) were made available for selection.¹² In this RFP, energy additions beyond the bid resources will be limited to the generic renewable resource and capacity additions will be limited to the generic capacity resource. Doing so allows ROSE-E to evaluate individual bids and combinations of bids in the context of PGE’s pathway to meet HB 2021’s targets. However, this analysis will produce only a cursory view of the resource additions necessary to comply with HB 2021. The 2023 CEP/IRP provides additional context regarding the most optimal resource expansion pathway for PGE.

In this analysis, ROSE-E will only use the main objective function (minimizing long-term costs).¹³ The benefits from each bid (energy and flexibility) and costs (variable and fixed) will be direct inputs into the model, along with the key financial parameters, price forecasts, and resource generation. The capacity value brought by each bid will be reflected in reductions in capacity need, calculated in PGE’s capacity model Sequoia. With these, PGE will calculate the traditional scoring metrics used in the 2023 CEP/IRP. PGE is also committed to work with Commission staff to determine the most informative approach to examine a low wholesale market price sensitivity and will share all sensitivity analyses with the IE for their review.

Once PGE determines the portfolio values for various combinations of bids that are examined in ROSE-E, PGE will convert the traditional metrics into a portfolio price score.

PGE will perform portfolio analysis for a population of designed portfolios to identify the expected portfolio cost across multiple economic futures. Comparing the costs of these portfolios across multiple economic futures will allow PGE to calculate the traditional portfolio scoring metrics including cost, variability, and severity as are described in Section 11.2 of the 2023 CEP/IRP. All top performing portfolios will receive a price score based upon 50% of the portfolio’s expected cost and 50% on the standard deviation of forecasted costs across all futures. Each portfolio’s price and risk performance will

¹⁰ See 2023 CEP/IRP, Appendix H.4 ROSE-E at 529, available here: <https://edocs.puc.state.or.us/efdocs/HAA/lc80haa8431.pdf>

¹¹ Proxy resources used in the 2023 CEP/IRP included onshore wind, offshore wind, solar, battery storage, solar plus storage, pumped storage, hydrogen, DERs, and transmission expansion resource options.

¹² For more information on portfolio modeling in the 2023 CEP/IRP, see Chapter 11 Portfolio Analysis, available at: <https://edocs.puc.state.or.us/efdocs/HAA/lc80haa8431.pdf>.

¹³ The other two objective functions (minimize short-term cost, minimize short-term reference cost) were only used for comparing alternative optimization choices in the 2023 CEP/IRP.

be converted into a portfolio price score allocated on a scaled basis with 1,000 points allocated to the lowest price and risk results. Upon completing this analysis, PGE will share its results with the IE and Commission staff for further discussion.

8. Final Shortlist

Upon completion of the portfolio analysis, PGE will use the price score of conforming bids to determine the best combination of cost and risk for PGE customers. These results will be used to determine PGE's final shortlist, which PGE will use to commence negotiations and will recommend for regulatory acknowledgment. Once the final shortlist is filed, PGE will engage in negotiations with those selected Bidders. Bates White, the selected IE, will issue its closing report two weeks after PGE has filed the final shortlist of bids.

Exhibit A: Required Permits

Permits/Studies	Required By						
	Wind	Solar	Geothermal	Hydro / Pumped Storage	Energy Storage (Batteries)	Biomass	Hydrogen/ Other
State permit (e.g., site certificate)	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist
Local land use permit (e.g., conditional use permit)	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist
FERC License (or final EIS from FERC)	n/a	n/a	n/a	Bid	n/a	n/a	n/a
Federal siting permit (e.g., NEPA Record of Decision for construction*) <i>*This does not include NEPA for an Eagle Take Permit</i>	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist	Final Shortlist
Air quality permit (e.g., ACDP, etc.)	n/a	n/a	n/a	n/a	n/a	Final Shortlist	n/a
FCC permit	Construction	Construction	Construction	Construction	Construction	Construction	Construction
FAA permits	CP	CP	CP	CP	CP	CP	CP
Airspace and Obstacle Evaluation Analysis	Bid	n/a	n/a	n/a	n/a	n/a	n/a
Water rights	n/a	n/a	Bid	Bid	n/a	Bid	Bid
Wastewater discharge permit (e.g., NPDES, WPCF, etc.)	n/a	Final Shortlist	Final Shortlist	n/a	n/a	Final Shortlist	Final Shortlist
Construction Permits (e.g., NPDES-1200C, building permit, site development permit, etc.)	Construction	Construction	Construction	Construction	Construction	Construction	Construction
Removal Fill Permits (wetland and in-water work, e.g., State, Army Corps)	Construction	Construction	Construction	Construction	Construction	Construction	Construction
Eagle surveys and take estimates: provide available survey data, a well justified preliminary take estimate, and a detailed schedule for completing surveys and final take estimate per USFWS-approved protocols	Bid	Bid	Bid	Bid	Bid	Bid	Bid
Federal ESA surveys: provide comprehensive project-wide survey results (this does not include any final pre-construction follow-up surveys, such as may be required in a site certificate or other project authorization, for the purpose of micro-siting and defining boundaries of and avoiding active occupied habitat in a given construction year)	Bid	Bid	Bid	Bid	Bid	Bid	Bid
State/local sensitive species surveys: provide comprehensive project-wide survey results (this does not include any final pre-construction follow-up surveys, such as may be required in a site certificate or other project authorization, for the purpose of micro-siting and defining boundaries of and avoiding active occupied habitat in a given construction year)	Bid	Bid	Bid	Bid	Bid	Bid	Bid
Cultural resource surveys started (at a minimum, contracted with a cultural resources consultant)	Bid	Bid	Bid	Bid	Bid	Bid	Bid
Tribal coordination initiated (started consultation with area tribes to discuss Traditional Use Studies, Traditional Cultural Properties, and other relevant studies)	Bid	Bid	Bid	Bid	Bid	Bid	Bid
Demonstrate a realistic timeline for procuring any additional permits, licenses, or assessments required to start construction	Bid	Bid	Bid	Bid	Bid	Bid	Bid
Is there any organized opposition to the project? If yes, in Column 3 provide an overview of the opposition that has occurred to date and measures taken to address it.	-	-	-	-	-	-	-

Key:

Bid - Must be obtained by bid submittal date

Final Shortlist - Must be obtained by bid Final Shortlist date

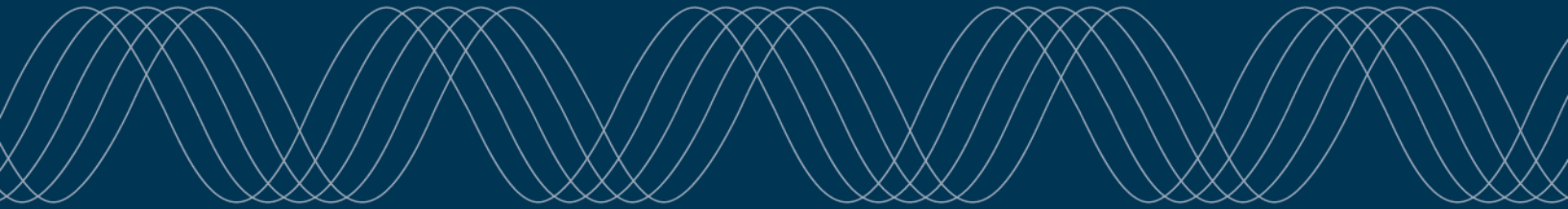
Construction - Must be obtained by start of construction

CP - Must be approved as a condition precedent in the definitive agreement

n/a - Not applicable

Appendix P

Benchmark Submission



2023 All-Source RFP



Portland General Electric's Benchmark Submission

Bid Descriptions

PGE currently intends to submit benchmark resources into the 2023 RFP to meet both PGE's renewable needs and non-emitting capacity needs. Benchmark bids currently under evaluation include wind, solar, hybrid and stand-alone energy storage resources. PGE's benchmark submission decisions will be finalized following OPUC approval of the 2023 RFP.

Utility Controlled Bid Elements

Certain assets controlled by the utility are under consideration for use in support of Benchmark Resources or an Affiliate bid. Utility assets presently evaluated include:

- Land in Northeast Oregon owned by the utility in support of a solar resource.
 - Approximately 300-600 acres located at the following coordinates: 45.696, -119.797
- Biglow Canyon Wind Farm's Large-Generator Interconnection Agreement and transmission rights with Point of Receipt at BIGLOW and Point of Delivery at BPAT.PGE available when Biglow Canyon Wind Farm generates below nameplate capacity.

This property is contiguous with current PGE operations. Due to security risks associated with co-location, PGE will only be making this property available to third-party developers under a utility owned commercial structure as to avoid unacceptable risks associated with multiple entity operation within the site perimeter.

The transmission rights associated with a Point of Receipt at BIGLOW and Point of Delivery at BPAT.PGE will also only be made available to utility-owned bids and on the condition that the rights cannot be redirected away from the specified Point of Receipt on a long-term basis.

